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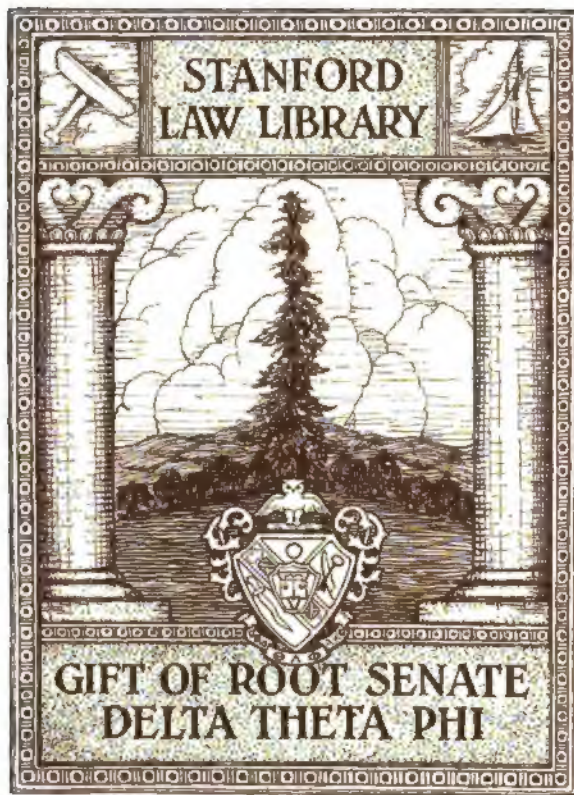
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AN  
**ANALYTICAL DIGEST**

OF ALL THE  
REPORTED CASES

DETERMINED BY

**The High Court of Admiralty**  
of England,

**The Lords Commissioners of Appeal**  
in Prize Causes,

4155

AND (ON QUESTIONS OF MARITIME AND INTERNATIONAL LAW) BY

**The Judicial Committee of the Privy Council ;**

ALSO OF

THE ANALOGOUS CASES

IN THE

**Common Law, Equity, and Ecclesiastical Courts,**

AND OF

THE STATUTES APPLICABLE TO THE CASES REPORTED :

**WITH NOTES**

FROM THE TEXT WRITERS, AND OTHER AUTHORITIES ON MARITIME LAW, AND THE  
SCOTCH, IRISH, AND AMERICAN REPORTS ;

**AND AN APPENDIX,**

CONTAINING THE PRINCIPAL STATUTES, ETC. ETC.

BY

**WILLIAM TARN PRITCHARD,**

ONE OF THE PROCTORS OF THE ECCLESIASTICAL AND ADMIRALTY COURTS IN DOCTORS' COMMONS.

---

*" Est quidem vera lex recta ratio, natura congruens, diffusa in omnes, constans, sempiterna ;  
neque erit alia lex Romæ, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni  
tempore una et immutabilis continebit."*

---

CICERO, *De Republicâ*, lib. iii.

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TO  
THE RIGHT HONOURABLE  
STEPHEN LUSHINGTON, D.C.L.

JUDGE OF THE HIGH COURT OF ADMIRALTY OF ENGLAND,  
A MEMBER OF THE JUDICIAL COMMITTEE OF HER MAJESTY'S MOST  
HONOURABLE PRIVY COUNCIL,  
&c. &c. &c.

**This Digest**

IS,

WITH A SINCERE ADMIRATION OF HIS HIGH JUDICIAL CHARACTER AND ATTAINMENTS,

AND BY HIS KIND PERMISSION,

RESPECTFULLY DEDICATED,

BY

HIS OBLIGED AND FAITHFUL SERVANT,

THE AUTHOR.



## P R E F A C E.

---

THE Law of England, consisting of a body of maxims founded on the principles of natural justice and equity, extended and applied by a series of statutes, the growth of several centuries, necessarily partakes of the varied character assumed during that period by the constantly increasing relations of her commerce, and her progress to the high state of civilisation and refinement she has now attained.

In the absence of any code, systematising and reducing into more regular order the entire laws of the country, (the expediency of which has long engaged the attention of some of her ablest lawyers and philosophers, though hitherto without any material result,) the wisdom and right adaptation of those laws to the purposes intended are to be found mainly in the decisions of the Judges, whose talents and attainments, as exhibited in their masterly expositions of the principles applicable to the various cases submitted to them for adjudication, are equalled only by the impartiality and integrity with which they have so long upheld the high character of the tribunals of their country, and established for themselves a lasting reputation.

The progress of time has added so largely to the voluminous stock of reported cases, that hence has arisen the necessity, of late years generally recognised and acted upon, for analytical compilations or Digests of the various dicta of the learned Judges classed under distinct heads, and embracing the necessary facilities of reference, so as to bring under one view the entire doctrine on each subject. These Digests are indispensable to the researches of the student or occasional reader, whilst those whose professional duty imposes upon them the obligation of a more elaborate consideration of rules and principles of law, and their application to decided cases, derive great assistance from, and are spared the loss of much valuable time by, the ready means of reference thus afforded to them.

As, however, the compilation of a work of this description would seem to fall more appropriately within the province of a higher department of the profession than that to which the Author has the honour to belong, it may perhaps be permitted to him to state the circumstances under which he has been induced to venture on its publication. His original intention was merely to collect and arrange, in notes of his own, with a view to the acquisition of more accurate knowledge in the practice of his profession, the leading principles of the law as administered in the Ecclesiastical and Admiralty

Courts, and the particular cases in which those principles are explained or illustrated. As he proceeded in the execution of this intention he found it essential to the full accomplishment of his object to give to his labours a more extended character, and he then received the impression that, with a little more care in the preparation, they might be made useful to the profession generally. In the Ecclesiastical department the valuable Digest of Dr. Maddy appeared to have in some measure pre-occupied the ground, but, finding that the reports of the able and important decisions of the Court of Admiralty in the various branches of Maritime Law, of which it has cognisance, were without any complete analysis or compilation, he was led to attempt the present Digest of them; and, at the suggestion of a learned member of the Bar in Doctors' Commons, he included in his work a similar Digest of all the analogous cases in the Common Law, Equity, and Ecclesiastical Courts, and of the statutes relating thereto, with references to the leading text authorities affecting or illustrating the decisions reported. With these additions the learned gentleman referred to was pleased to consider the work would prove acceptable and useful not only to the practitioners in Doctors' Commons, but to members of the legal profession generally—to the former as facilitating their reference to more extended sources of information, and to the latter, as developing and illustrating the principles and practice of a branch of the law, which, though only occasionally attracting their attention, is highly interesting, from its great importance to the commercial interests of Great Britain, and from the simplicity and purity of its principles, as contradistinguished from the intricate ramifications of the municipal law consequent upon an artificial and highly refined state of society.

The High Court of Admiralty is, strictly speaking, the Court of the Lord High Admiral of England, the Judge being styled his Lieutenant; but since the office of Lord High Admiral has been in commission, the Judge has been appointed by the Crown, and the process of the Court has issued in the name of the Sovereign.

The Lord High Admiral, by virtue of his office, also appointed under the Great Seal of his Court of Admiralty, his deputies or Vice-Admirals, and their Lieutenants, or Judges, in the principal ports of the kingdom and its dependencies, and these functionaries exercised, within the limits of their several stations, the same jurisdiction as the High Court of Admiralty, to which latter Court, however, until very recently, appeals lay from the decisions of the Vice-Admiralty Courts; but, by the statute 3 & 4 W. 4. c. 41. such appeals now lie to the Judicial Committee of the Sovereign in Council.

The High Court of Admiralty was formerly held at St. Margaret's Hill in Southwark, but its sittings have now for many years taken place in the common hall of Doctors' Commons.\* The Court is of great antiquity. In the reign of Richard III. it was said to have existed time out of mind†, and several records in the time of Henry III. and Edward I. so speak of it,

\* Floyer, Proc. Prac. 15.; Pepys' Diary, vol. ii. p. 17.

† Godolph. Adm. Jur. c. 3. p. 28, *et seq.*; Wynne's life of Sir Jeoline Jenkins, p. 77.; Co. Lit. p. 260.; 1 Com. Dig. 267.



though, according to Sir Henry Spellman\*, Lambard†, and other writers‡, the Court was first established by Edward III. The rules by which it was governed were the ancient laws, customs, and usages of the seas, including such selections from the laws of Rhodes and Oleron, the Waterrecht of Wisbuy, the Hanseatic Ordinances, the Consolato del Mare, the Marine Ordinance of Louis XIV. and others, as from their natural justice and sound policy obtained generally in the Admiralty Courts of Europe. These, collectively, constituted the general Maritime Law of England, received and administered in the High Court of Admiralty, but modified and controlled from time to time by the Statute Law of the land.

The ancient jurisdiction of this Court comprehended the same subjects as the Consular Courts of the Mediterranean, on the model of which it was framed; a jurisdiction which extended to the cognisance of all maritime contracts or torts, and all injuries or offences committed upon the high seas, in ports and havens, as far as the ebb and flow of the tide, in great rivers beneath the bridges thereof near the sea, (*infra primos pontes*,) and in all foreign parts. §

This jurisdiction, however, was, and still is, exercised according to the rules and practice of the Roman Civil Law, which, from its universality, and as forming the foundation of the system of jurisprudence established in most of the great nations of Europe, is best adapted to the proceedings of a court administering the Law of Nations, and particularly that branch of it—the law of prize—which affects so extensively the interests of foreign states and their subjects in their relations with British subjects and others.

The readers of English history are, however, well aware of the jealousy and distrust with which the common lawyers and the people generally regarded the Roman Civil Law, from the time of its first adoption into the institutions of the country, and more especially from its connection with the administration of ecclesiastical affairs, and the great power it gave to the priesthood of former days.

Frequent complaints, and loud and angry remonstrances, were made, (probably not altogether without foundation) of the jurisdiction usurped by the Admiralty Courts||; and accordingly, in the reign of Richard II. two statutes were passed ¶, expressly enacting that the Admirals and their deputies, or Judges, should not thenceforth have jurisdiction over wreck of the sea, or in relation to any matter or thing done within the body of a county, but that all contracts, torts, or injuries there arising, should be tried and determined according to the course of the Common Law. It would seem, however, that even these statutes were scarcely sufficient to remedy the defects complained of; for in the reign of Henry IV. a further and severe statute was passed \*\*, giving to the party aggrieved by proceedings against him in the Admiralty Court, in cases not clearly within the

\* Gloss. 13.

† Archeion 41.

‡ Beawes' Lex Mercat. 400.; 3 Stephens' Black. Com. 436.

§ 4 Inst. 75.

|| Wynne's life of Sir L. Jenkins, p. 78.

¶ 13 Rich. 2. c. 15 Rich. 2. c.

\*\* 2 Hen. 4. c. 11.; 1 Salk. 31.

jurisdiction of that Court, a remedy not only against the plaintiff in those proceedings, but also against the Judge and officers of the Court, by action in the Common Law Courts, with double damages.\*

It appears that down to the time of the Commonwealth these statutes were not so interpreted by the Court of Admiralty as to lead to its acquiescing in any abridgment of its ancient jurisdiction, but it continued to assert its right to the cognisance of all maritime contracts, torts, &c. on the high seas, and as far as the tide ebbs and flows. This indeed appears to be the true limit within which, according to principle, analogy, and public convenience, the Admiralty jurisdiction was intended to be confined by the statutes referred to; and accordingly the Court of Admiralty (besides its criminal jurisdiction, which will be presently adverted to, and the authority it possessed in the government of the Royal Navy,) appears at this time to have still exercised jurisdiction over all contracts of freight, bottomry, and mariners' wages; all charter-parties (save as to the penalties in the latter); all contracts for the building of ships, or for repairs, or supplies thereto; all cases of wreck at sea, jetsam, flotsam, lagan, or derelict; all matters relating to the office and duties of naval officers, mariners, and pilots, and connected with ship-owners; all questions of salvage and average, of possession of, and title to ships generally, and of the right to royal fish; all cases of damage by collision or other injuries affecting navigation; and all obstructions to navigation to and from the sea in the great rivers (*infra primos pontes*).†

Great endeavours, however, appear to have been made by the authorities of the Common Law Courts to strain the interpretation of these statutes to the extent of confining the Admiralty jurisdiction to matters done wholly and exclusively upon the high seas; and, at the Restoration, the jealousy of the common lawyers caused attempts to be made to oust the Admiralty jurisdiction, even in cases of bottomry and the recovery of mariners' wages, upon the ground that the contracts in such cases were made upon land, though in substance performed upon the high seas; and some few cases are to be found in which prohibitions from the Common Law Courts to the Court of Admiralty were awarded, as also in cases of security taken in the Admiralty by the minor against the major part-owners for the safe return of their ships from voyages of which the former disapproved‡; but the manifest injustice of such a construction of the statutes, and the great advantages of such subjects being left to the cognisance of the Court of Admiralty, ultimately prevailed, and its jurisdiction over them was fully established, except as to mariners' wages, in cases of special contracts.

The adjudication, however, of questions of freight, charter-parties, and

\* By a recent statute, however (3 & 4 Vict. c. 65.), the same privileges and protection as are possessed by the Judges of the superior Courts of Common Law are allowed to the Judge of the Court of Admiralty.

† See Godolphin, Adm. Jur. cap. iv. p. 45, *et seq.*, and cap. viii. p. 91, *et seq.* and the resolutions upon the jurisdiction of the Admiralty of King Charles I. in council, subscribed by all the judges, 18th Feb. 1632.

‡ Abb. Sh. 101. n.

of claims for the building of, or repairs or supplies to, ships, and also the investigation of questions of title to ships generally, were withdrawn from the Court of Admiralty, its power of transferring possession of a ship being limited to cases of indisputable title only. In the latter part of the reign of Charles II., a bill, re-enacting many of the provisions contained in four ordinances of the year 1652, in the time of the Commonwealth, and restoring to the Court its ancient jurisdiction in these and other matters, was brought into parliament; but the bill was lost, notwithstanding that Sir Leoline Jenkins, at that time Judge of the High Court of Admiralty, in a very profound and elaborate argument before the House of Lords\*, forcibly urged the justice and public advantage of such a jurisdiction being conceded to the Admiralty, and that numerous petitions were presented from the mercantile classes in support of the measure.

In the Report of the Commissioners† appointed to inquire into the office and duties of the Judges of the Court of Admiralty, and of certain of the Ecclesiastical Courts in Doctors' Commons, it is recommended that the jurisdiction of the High Court of Admiralty should be extended to the cognisance of seamen's wages under special contracts, and it is also suggested as worthy of consideration whether great advantages would not result to the commercial interests of the country if the Court were permitted to exercise concurrent jurisdiction with the other Courts in questions of title to ships generally, and of freight and other mercantile matters; and accordingly a recent statute‡, framed in accordance with some of the recommendations in this report, extends the jurisdiction of the Court of Admiralty to all causes of salvage or damage, though arising within the body of a county, to questions of title in causes of possession, salvage, damage, wages, or bottomry, to the recovery of demands for necessary supplies to foreign ships, and to the cognisance of claims of mortgagees, where the ship remains under arrest, or the proceeds thereof are in the registry of the Court,—an extension of jurisdiction which has much increased the practice of the Court, and has been found highly beneficial to the commerce of the country. The same statute also gives the Judge of the Court the power of directing issues to be tried at Common Law, or of impannelling juries and taking evidence *vivâ voce* in his own Court, instead of by secret examinations in writing, according to the practice of the Civil Law.

The criminal jurisdiction of the Court of Admiralty was formerly as extensive as its civil jurisdiction, embracing the cognisance of all cases of death or mayhem on the high seas, by whomsoever committed, and the entire governance of the Royal Navy of England. As, however, these trials were conducted according to the course of the Civil Law, which required the evidence of confession or express testimony, to convict offenders, and was repugnant, therefore, to the Criminal Law of England, this jurisdiction was, by stat. 28 *Hen. 8. c. 15.*, abolished§, and the Crown was thereby authorized, from time to time, as occasion might require, to issue

\* Wynne's life of Sir L. Jenkins, p. 76.

† 3 & 4 Vict. c. 65.

‡ 15th Aug., 1833.

§ 4 Stephens' Black. Com. 331.

commissions under the Great Seal of England, constituting the Lord High Admiral, or his lieutenant, and certain of the Judges of the Common Law Courts, to be named by the Lord Chancellor, Commissioners for hearing and determining that class of offences. By the stat. 39 *Geo.* 3. c. 37. it was declared that all offences on the high seas were triable by those Commissioners; and, by a subsequent statute (46 *Geo.* 3. c. 54.) a similar jurisdiction with reference to offences committed abroad was also conferred on them. By the stat. 4 & 5 *W.* 4. c. 36., establishing the Central Criminal Court, the Judge of the Admiralty is appointed one of the Judges of that Court; and it is provided that under any commission of oyer and terminer issued pursuant to that act, the Judges of the Central Criminal Court may hear and determine all offences committed on the high seas, or elsewhere within the Admiralty jurisdiction; and by a recent stat. (7 & 8 *Vict.* c. 2.), any justice of assize, oyer and terminer, or gaol delivery, may likewise inquire of and determine all such offences.

The criminal jurisdiction of the Court of Admiralty over pirates was, by successive statutes\*, likewise transferred to the same tribunal; and that branch of it which extended to the government of the Royal Navy was abolished by the institution of Naval Courts Martial, under the statutes of 13 *Car.* 2. st. 1. c. 9. and 22 *Geo.* 2. c. 33.

This (the criminal) branch of its jurisdiction may be said, therefore, to have been almost entirely swept away; the only fragments now left of it consisting in the power to punish masters and officers of merchant vessels for wearing illegal colours, non-resistance to pirates, disrespect to her Majesty's ships in not striking topsail, &c.; and, in the prize branch, the power of punishing the same parties for desertion or disobedience of convoy.

The most important part, however, of the Admiralty-jurisdiction is its administration of the Law of Prize.

The Prize Court of Admiralty is perfectly distinct from the general, or, as it is termed, the Instance Court of Admiralty, and is called into existence by warrant from the Lords Commissioners of the Admiralty to the Judge of the High Court of Admiralty, issued in pursuance of a special commission to them from the Crown under the Great Seal of England at the commencement of each war. This commission refers to the declaration of war against the particular state therein mentioned, and directs the issue of letters of marque and reprisal against the ships belonging to the subjects of that state, and the warrant authorizes the Judge of the Court of Admiralty to take cognisance of all seizures of such vessels as prize, and of all questions relating thereto. A separate commission and warrant usually issues to authorize the seizure of, and adjudication upon, the vessels of each state against which war is declared.† With the Prize Court so constituted, the temporal Courts cannot interfere by prohibition, except where it exceeds its jurisdiction; but appeals from its decisions lie to certain members

\* 28 *Hen.* 8. c. 15., 11 & 12 *W.* 3. c. 7., 18 *Geo.* 2. c. 30., 7 & 8 *Geo.* 4. c. 30., 1 *Vict.* c. 88., and 5 & 6 *Vict.* c. 28. s. 16.

† 2 *Chitty's Gen. Prac.* 538.



of the Privy Council appointed under a similar commission, and styled the Lords Commissioners of Appeal in Prize Causes.\* By a recent statute the Judicial Committee of the Privy Council are authorized to take cognisance of Prize Appeals; but power is therein reserved to the Crown to issue a special commission as formerly for the cognisance of such appeals in cases where, by treaties with foreign powers, it is provided that a special Court of Appeal shall be so constituted.

The law of Prize is, like the ordinary Maritime Law, founded on the general principles of justice and equity, as received and acknowledged by all independent nations, and by the wisest and most learned of their lawyers and philosophers. Though nearly equal in antiquity, it may be said to have been, in comparatively modern times only, raised to the dignity of a science by the lucid and profound decisions of the illustrious Judges of the English Prize Courts†, delivered upon questions arising out of the extended operations of modern commerce and naval warfare.‡

The most distinguished of these was the late Lord Stowell, whose high intellectual powers were only equalled by the variety and richness of his legal and classical attainments. During the early part of the present century, a period pregnant with events so momentous to the peace of Europe, the struggle in which this country was engaged with a powerful neighbouring nation, and which involved her successively in hostility with all the European states, necessarily gave rise to numerous important and intricate questions of international law. The genius of Lord Stowell rose with the exigency; his lucid and comprehensive intellect penetrated and mastered with facility the great principles applicable to the complicated and extensive interests submitted to his arbitrement; his integrity and high estimate of the judicial character, elevated him above all political prejudices, and subdued even the honest sympathies of national feeling; and, in a series of decisions, sustained by a strength and perspicuity of reasoning, and a depth and variety of legal knowledge which have never been surpassed, enriched and adorned by a copiousness of eloquence and a classical purity of diction, rarely united with such attainments, he vindicated the supremacy of justice, and transmitted to posterity models of judicial integrity, wisdom, and eloquence, which will command and receive universal admiration and respect "so long as the nations judging and recording in the English tongue shall maintain any supremacy in the maritime relations of the

\* The first commission of this kind was issued in the reign of Charles II., on the breaking out of the first Dutch war. Wynne's *Life of Jenkins*, p. 12.

† Sir Julius Cæsar in the reign of Queen Elizabeth, Sir Henry Vane in that of Charles I., Sir Leoline Jenkins and Sir Thomas, and Dr., Exton in that of Charles II., and Sir Charles Hedges in the reigns of King William and Queen Anne.

‡ Dr. (afterwards Sir Leoline) Jenkins, was, in pursuance of an order from the Lords Commissioners of Appeal in Prize Causes, dated 6th Feb. 1664, directed, with certain other eminent civilians, to review the maritime laws, and compile a body of rules and ordinances by which the Judge of the Admiralty for the time being should proceed in the adjudication of prizes, which having been done, and approved of by his Majesty Charles II. in council, became the standard of those proceedings.

globe.”\* By this country in particular, which may claim him as its own, and whose tribunals have been invested by his genius with so imperishable a fame, he will ever be held in revered and grateful remembrance, and his memory cherished with pride and admiration. Long will his judgments be an instructive and fascinating study, alike to the civilian, the statesman, the historian, and the scholar; “*quicquid ex illo amavimus, quicquid mirati sumus manet mansurumque est in animis hominum in æternitate temporum famâ rerum.*”†

Of the eminent and learned civilian who now presides over the High Court of Admiralty of England, the Right Hon. Stephen Lushington, it would not become the Author to say more than that his triumphant career at the Bar in Doctors’ Commons and the higher Courts of Appeal, appeared naturally to point him out as the fittest successor of the distinguished Judges to whom reference has been made. When in the progress of time his course, like theirs, shall have been accomplished (and may that period be far distant), history will not fail to enrol his name also in her pages, and to claim for him the well-merited admiration and respect of all who have discrimination and gratitude to appreciate his brilliant and extensively useful public services.

Recurring to the present work, the Author would observe, with reference to the manner of its execution, that his main object has been to exhibit and elucidate the law and practice of the Court of Admiralty and of the Courts of Appeal therefrom, as embodied in their recorded decisions. As auxiliary to this object, and with a view to present this branch of the law to the reader in its entirety, the Author has, in accordance with the suggestions of the learned gentleman before referred to, embraced in his scheme the cases *in pari materiâ* in the Common Law, Equity, and Ecclesiastical Courts, and the statutes applicable to all the cases reported; in doing which he is aware that in many parts of the work he is open to the charge of having to some extent exceeded the limits to which such analogies should be confined: for which he has to solicit the indulgence of his readers, reminding them, however, that, as redundancy is a fault more venial than omission, he has in all instances in which he doubted, considered it expedient to admit rather than to reject.

In presenting the substance of the several cases under their appropriate heads, the Author has not confined himself to a mere arrangement of the reporter’s notes, but has, particularly with regard to the Admiralty Reports, investigated each case, and endeavoured to extract from it every important dictum contained in it. Whilst stating the principle of law upon which the case was decided, he has also sought to embody the leading facts, in order that the reader may not only be acquainted with the former, but enabled to perceive more readily its application to the latter.

Facility of reference being one of the principal uses of a Digest, whenever a title treated of in the present work has exceeded the limits which it has been thought advisable there to assign to it, the reader has been directed

\* Curtis’s Adm. Dig. Introd. p. 10.

† Tacit. Agric.

to those works in which the law and the cases decided upon it are to be found. It has likewise been thought useful to illustrate those points of law upon which no direct decision has as yet been given, or which have not been thoroughly settled, by quotations in the form of notes from text writers and other authorities on international and maritime law. To have embodied the whole of these authorities, ancient and modern, would have swelled the work to an inconvenient size, and destroyed its character of a Digest, besides requiring a larger portion of time than the Author could spare from his more urgent professional engagements, and greater learning and ability than he can presume to aspire to. He has, therefore, in citing such authorities, felt it necessary to restrain himself within the limits of a due subserviency to the main object of his work.

Frequent resort has in this manner been had to Lord Tenterden's invaluable work on Shipping, to Mr. Smith's able Compendium of Mercantile Law, and to the chapters on Bottomry and Respondentia in Mr. Justice Park's deservedly-esteemed work on Marine Insurance. The Author has also referred to a recent edition of "Gresley's Law of Evidence," by his friend, Christopher A. Calvert, Esq., of the Chancery Bar, and has been much assisted in his work by that gentleman's able practical suggestions, for which his acknowledgments are due. Extracts from the old maritime writers have been sparingly introduced, and in some instances a mere reference only made to them, particularly in matters of prize; the necessity for an extended study of which branch of the law has happily been superseded by many years of peace among the nations of Europe.

Notes of certain analogous cases have been also introduced from the Scotch, Irish, and American Reports. In analysing those from America, the Author has availed himself of an able Digest, by Mr. Curtis, of the American Bar, from which work he has also to acknowledge having derived much assistance in his own analysis of the late Sir Christopher Robinson's Admiralty Reports.

The American Courts of Admiralty are, in truth, grafts from those of this country, founded on the same law (the Roman Civil Law), and for many years fostered by their association with British institutions, though they have long since reached maturity and independence, and now exercise a larger jurisdiction than that possessed by the parent Courts. They are presided over by Judges of distinguished ability, whose names inspire respect no less in this than in their own country. Amongst them may be mentioned, as occupying a distinguished pre-eminence, that very learned Judge and profound expositor of international as well as local law, Mr. Justice Story.

Some extracts have also been inserted from "Notes of Cases," compiled apparently with great care in the "Law Magazine."

Others from a useful periodical, entitled "Notes of Cases in the Ecclesiastical and Maritime Courts," which, though not bearing the stamp and authority of regular reports, are, from the care and accuracy with which they are given, entitled to and receive great attention in the Courts of

Doctors' Commons. These, with the able reports by Dr. Deane, contained in the "Jurist," (all of which have been included in the present Digest,) have enabled the Author to present to his readers all the material cases decided in the High Court of Admiralty down to the end of the past year.

It may, perhaps, also be proper to mention that all the cases in the present work have been arranged chronologically with reference to the reports, as far as was consistent with a correct classification under their various titles, and the divisions and subdivisions thereof; except those cases not made the subject of a separate division, and overruling prior decisions. These latter cases have been placed at the head of the divisions to which they belong, in order more readily to attract the reader's attention.

The Appendix, containing the principal statutes referred to in the work, Orders in Council, Prize Proclamations, and other similar information may, perhaps, be found of advantage, as saving the time which would otherwise be consumed by the reader in seeking them amongst the various works in which they are to be found.

With these explanations, the Author submits with diffidence the product of his labours to the candid consideration and indulgence of the members of his own profession, and of the law generally, trusting, that it may be the means of saving much of the valuable time of the former, and of some assistance to the latter in facilitating such inquiries as they may have occasion to make into a kindred branch of their profession. The accomplishment in any degree of either of these objects will be an ample recompense to him for the labour which he has, during the last four years, devoted to the preparation of his work, and without which he is well aware he could not reasonably expect it to be received with any degree of public favour.

*Doctors' Commons, July, 1847.*



# INDEX OF TITLES.

| A.   |            | D.                                  |            |
|--|------------|-------------------------------------|------------|
| ADMIRALS   | Page 1     | DAMAGE                              | Page 121   |
| ADMIRALTY  | 2          | DAMAGE (PERSONAL)                   | 140        |
| AFFIDAVITS   | 8          | DEMURRAGE                           | 143        |
| AGENTS   | 10         | DERELICT                            | 144        |
| ALIENS   | 11         | DOMICIL — (see NATIONAL CHARACTER). |            |
| ALLEGATIONS  | 16         | DROITS OF ADMIRALTY                 | <i>ib.</i> |
| AMELIORATIONS                                      | 19         |                                     |            |
| ANSWERS  | 20         |                                     |            |
| APPEALS  | 21         |                                     |            |
| APPEARANCE   | 28         |                                     |            |
| APPRAISEMENT — (see UNLIVELY AND APPRAISEMENT).    |            |                                     |            |
| ASSIGNEES  | <i>ib.</i> |                                     |            |
| ATTACHMENT   | <i>ib.</i> |                                     |            |
| AVERAGE  | 31         |                                     |            |
|  |            |                                     |            |
| B.   |            | E.                                  |            |
| BAIL   | 33         | EQUITY, COURTS OF — (see COURTS).   |            |
| BLOCKADE   | 36         | EVIDENCE                            | 150        |
| BONDS  | 49         | EXAMINERS                           | 157        |
| BOTTOMRY   | 50         |                                     |            |
| BOUNTIES — (see HEAD-MONEY—PIRATES — SLAVE TRADE). |            |                                     |            |
| BROKER   | 80         |                                     |            |
|  |            |                                     |            |
| C.   |            | F.                                  |            |
| CAPITULATIONS                                      | 81         | FACTORS                             | 158        |
| CAPTORS  | <i>ib.</i> | FLAG SHARP                          | <i>ib.</i> |
| CAPTURE  | 92         | FLOTSAM — (see WRECK).              |            |
| CARGO  | 93         | FOREIGNERS                          | 162        |
| CARTEL   | 94         | FRAUD                               | 163        |
| CHANCERY, COURTS OF — (see COURTS).                |            | FREIGHT                             | 164        |
| CHARTER PARTY                                      | 96         | FURTHER PROOF                       | 173        |
| CINQUE PORTS                                       | <i>ib.</i> |                                     |            |
| CLAIMANTS  | <i>ib.</i> |                                     |            |
| COLONIAL TRADE — (see TRADE WITH THE ENEMY).       |            |                                     |            |
| COLOURS  | 99         |                                     |            |
| COMMISSIONERS                                      | <i>ib.</i> |                                     |            |
| COMPENSATION — (see CAPTORS).                      |            |                                     |            |
| CONSULS  | 100        |                                     |            |
| CONTEMPT   | 101        |                                     |            |
| CONTINUITY OF VOYAGE                               | 102        |                                     |            |
| CONTRABAND   | 103        |                                     |            |
| CONVOY   | 111        |                                     |            |
| COSTS  | 112        |                                     |            |
| COSTS AND DAMAGES                                  | 116        |                                     |            |
| COURTS   | <i>ib.</i> |                                     |            |
| CROWN  | 118        |                                     |            |
| CUSTOMS AND USAGES                                 | 120        |                                     |            |
|  |            |                                     |            |
|  |            | G.                                  |            |
|  |            | GREENWICH HOSPITAL                  | 176        |
|  |            |                                     |            |
|  |            | H.                                  |            |
|  |            | HEAD-MONEY                          | 178        |
|  |            |                                     |            |
|  |            | I.                                  |            |
|  |            | IDENTITY                            | 181        |
|  |            | ILLEGAL COLOURS — (see COLOURS).    |            |
|  |            | INHIBITION                          | <i>ib.</i> |
|  |            | INTEREST                            | <i>ib.</i> |
|  |            | INTERVENER                          | 182        |
|  |            | ISSUES — (see ADMIRALTY).           |            |
|  |            |                                     |            |
|  |            | J.                                  |            |
|  |            | JETSAM — (see WRECK).               |            |
|  |            | JOINT-CAPTURE                       | 183        |
|  |            |                                     |            |
|  |            | L.                                  |            |
|  |            | LAW OF NATIONS                      | 194        |
|  |            | LAWS OF OLERON                      | 193        |

|                                   |          |   |          |
|-----------------------------------|----------|---|----------|
| LETTERS OF MARQUE - - -           | Page 193 | RECAPTURE - - -                                 | Page 349 |
| LICENCES - - -                    | - 195    | REGISTRARS - - -                                | - 350    |
| LIENS - - -                       | - 209    | REGISTRAR AND MERCHANTS - - -                   | - 351    |
| LIGAN — (see WRECK).              | -        | RESCUE — (see ADMIRALTY).                       | -        |
| LIMITATIONS - - -                 | - 212    | RESPONDENTIA — (see BOTTOMREY).                 | -        |
| LOORDS OF MANORS - - -            | - 213    | RESTITUTION - - -                               | - 352    |
|                                   |          | ROYAL FISH — (see CROWN).                       | -        |
|                                   |          | ROYAL NAVY - - -                                | - 353    |
| M.                                |          |   |          |
| MARINERS - - -                    | - 214    | S.  |          |
| MARINER'S CONTRACT - - -          | - 216    | SALVAGE (CIVIL) - - -                           | - 354    |
| MARSHAL - - -                     | - 220    | — (MILITARY) - - -                              | - 400    |
| MASTERS - - -                     | - 221    | — (MIXED) - - -                                 | - 408    |
| MATERIAL MEN - - -                | - 225    | SEA - - -                                       | - 409    |
| MATES — (see MARINERS).           | -        | SEA BATTERY — (see DAMAGE, PERSONAL).           | -        |
| MERCHANDISE - - -                 | - 230    | SEAMEN — (see MARINERS).                        | -        |
| MORTGAGEES - - -                  | - ib.    | SECURITY FOR COSTS - - -                        | - 410    |
| MORTGAGES — (see MORTGAGEES).     | -        | SHIPS - - -                                     | - 415    |
| MORTGAGOR — (see MORTGAGEES).     | -        | SHIP'S REGISTERS - - -                          | - 418    |
|                                   |          | SLAVES - - -                                    | - 420    |
|                                   |          | SLAVE TRADE - - -                               | - 422    |
|                                   |          | STATUTES - - -                                  | - 446    |
|                                   |          | STOPPAGE IN TRANSITU - - -                      | - 445    |
| N.                                |          |   |          |
| NATIONAL CHARACTER - - -          | - 233    | T.  |          |
| NAVIGATION LAWS - - -             | - 248    | TENDERS - - -                                   | - 448    |
| NAVY BOARD - - -                  | - 261    | TITLE - - -                                     | - 450    |
| NECESSARIES — (see MATERIAL MEN). | -        | TRADE WITH THE ENEMY - - -                      | - 456    |
| NEUTRALS - - -                    | - 262    | TREATIES - - -                                  | - 464    |
|                                   |          | TRINITY HOUSE — (see PILOTS — TRINITY MASTERS). | -        |
|                                   |          | TRINITY MASTERS - - -                           | - 466    |
| O.                                |          |   |          |
| ORDERS IN COUNCIL - - -           | - 266    | U.  |          |
| ORDERS OF COURT — (see PRACTICE). | -        | UNLIVERY AND APPRAISEMENT - - -                 | - 467    |
| OWNERS - - -                      | - 267    | USAGE — (see CUSTOMS AND USAGES).               | -        |
|                                   |          |   |          |
| P.                                |          |   |          |
| PAUPERS - - -                     | - 281    | V.  |          |
| PILOTS - - -                      | - 282    | VICE-ADMIRALTY COURTS — (see ADMIRALTY.)        | -        |
| PIRATES - - -                     | - 286    | VISITATION AND SEARCH - - -                     | - 468    |
| PLEADINGS - - -                   | - 291    |   |          |
| PORTS — (see SEA).                | -        | W.  |          |
| POSSESSION - - -                  | - 295    | WAGES - - -                                     | - 470    |
| PRACTICE - - -                    | - 300    | WAR - - -                                       | - 503    |
| PRIMAIRE — (see MASTERS).         | -        | WARRANT — (see PRACTICE).                       | -        |
| PRIVATE ADVENTURE - - -           | - 308    | WITNESSES - - -                                 | - 504    |
| PRIZE - - -                       | - 309    | WRECK - - -                                     | - 510    |
| PRIZE AGENTS - - -                | - 335    |   |          |
| PROCTORS - - -                    | - 342    |   |          |
| PROHIBITION - - -                 | - 344    |   |          |
|                                   |          |   |          |
| R.                                |          |   |          |
| RANSOM - - -                      | - 347    |   |          |
| RECAPTORES - - -                  | - 348    |   |          |

# INDEX OF TITLES EXTENDED.

|   |   |   |      |   |
|---|---|---|------|---|
| <b>ADMIRALS</b>   | - | - | Page | 1 |
| <b>I. Of the Lord High Admiral</b>  | - | - | 1    |   |
| <b>II. Of Admirals generally</b>  | - | - | 1    |   |
| <hr/>   |   |   |      |   |
| <b>ADMIRALTY</b>  | - | - | 2    |   |
| <b>I. Of Courts of Admiralty generally</b>  | - | - | 2    |   |
| 1. <i>Of the Admiralty Jurisdiction of Courts of Equity</i> —see <b>COURTS</b> .  |   |   |      |   |
| <b>II. Of the High Court of Admiralty of England</b>  | - | - | 2    |   |
| 1. <i>Of the Jurisdiction of Courts of Common Law with reference to</i> —see <b>PROHIBITION</b> .                             |   |   |      |   |
| 2. <i>Of the Jurisdiction of Courts of Equity with reference to</i> —see <b>COURTS</b> , cap. I. sect. 2.                     |   |   |      |   |
| <b>III. Of the Proceedings in the High Court of Admiralty</b>   | - | - | 3    |   |
| <b>IV. Of the Jurisdiction of the High Court of Admiralty</b>   | - | - | 3    |   |
| 1. <i>Generally</i>   | - | - | 3    |   |
| 2. <i>With reference to the locality of the cause of action</i>   | - | - | 4    |   |
| 3. <i>With reference to the Execution of sentences of Courts of Admiralty abroad</i>  | - | - | 5    |   |
| 4. <i>To enforce its process</i>  | - | - | 6    |   |
| (a) <i>Generally</i>  | - | - | 6    |   |
| (b) <i>In cases of rescue</i>   | - | - | 6    |   |
| 5. <i>To direct issues and new trials</i>   | - | - | 6    |   |
| 6. <i>With reference to Vice-Admiralty Courts</i>   | - | - | 7    |   |
| 7. <i>Miscellanea</i>   | - | - | 7    |   |
| <i>And see the respective titles with reference to the Jurisdiction of the High Court of Admiralty on each of such heads.</i> |   |   |      |   |
| <b>V. Of the Prize Jurisdiction of the High Court of Admiralty</b> —see <b>PRIZE</b> .  |   |   |      |   |

|   |   |   |     |   |
|---|---|---|-----|---|
| 1. <i>As to head-money</i> —see <b>HEAD-MONEY</b> .                                 |   |   | Pag | 7 |
| 2. <i>As to joint-capture</i> —see <b>JOINT-CAPTURE</b> .                           |   |   |     |   |
| 3. <i>As to prize agents</i> —see <b>PRIZE AGENTS</b> .                             |   |   |     |   |
| 4. <i>As to ransom</i> —see <b>RANSOM</b> .   |   |   |     |   |
| 5. <i>As to military salvage</i> —see <b>SALVAGE</b> (military).                    |   |   |     |   |
| <b>VI. Of the Court of Admiralty of the Cinque Ports</b> —see <b>CINQUE PORTS</b> . |   |   |     |   |
| <b>VII. Of Vice Admiralty Courts</b>  | - | - | 7   |   |
| 1. <i>Of the Jurisdiction of</i> —  | - | - | 7   |   |
| (a) <i>Generally</i>  | - | - | 7   |   |
| (b) <i>As to the navigation laws</i> —see <b>NAVIGATION LAWS</b> .                  |   |   |     |   |
| (c) <i>In suits for possession of ships</i> —see <b>POSSESSION</b> .                |   |   |     |   |
| (d) <i>In matters of prize</i> —see <b>PRIZE</b> .                                  |   |   |     |   |
| (e) <i>Over prize agents</i> —see <b>PRIZE AGENTS</b> .                             |   |   |     |   |
| (f) <i>In slave seizures</i> —see <b>SLAVE TRADE</b> .                              |   |   |     |   |
| (g) <i>In cases of title to ships</i> —see <b>TITLE</b> .                           |   |   |     |   |
| 2. <i>Of the proceedings in</i> —   | - | - | 8   |   |
| (a) <i>Generally</i>  | - | - | 8   |   |
| (b) <i>On appeal</i>  | - | - | 8   |   |
| 3. <i>Miscellanea</i>   | - | - | 8   |   |
| 4. <i>Of the Courts of Appeal from</i> —see <b>APPEAL</b> .                         |   |   |     |   |

|  |   |   |    |  |
|--|---|---|----|--|
| <b>AFFIDAVITS</b>  | - | - | 8  |  |
| <b>I. Of the Preparation of</b> —  | - | - | 8  |  |
| <b>II. Where received</b>  | - | - | 8  |  |
| <b>III. Where rejected</b>   | - | - | 9  |  |
| <b>IV. Miscellanea</b>   | - | - | 10 |  |
| <b>V. Of the Allowance of Costs of irrelevant Affidavits</b> —see <b>COSTS</b> . |   |   |    |  |

|  |      |  |    |
|--|------|--|----|
| VI. To lead Security for Costs — see SECURITY FOR COSTS.                 | Page | 6. Allegations responsive to —   | 19 |
|  |      | See PLEADING.  |    |
| AGENTS - - -   | 10   | AMELIORATIONS - - -  | 19 |
| I. How far representing their Principals -                               | 10   | ANSWERS - - -  | 20 |
| II. Principals how far bound by Acts of —                                | 10   | I. General Considerations with reference to —                            | 20 |
| III. Principals how far liable for Acts of —                             | 10   | II. Of Proceedings to enforce —  | 20 |
| IV. Miscellanea. - - -   | 11   | III. Of Objections to —  | 21 |
| V. Declarations of — how affecting their Principals — see EVIDENCE.      |      | 1. Generally - - -   | 21 |
| VI. Of Accounts and Advances of — see SALVAGE (civil).                   |      | 2. After publication - - -   | 21 |
| VII. Of the Right of — to act as Salvors — see SALVAGE (civil).          |      | IV. Miscellanea - - -  | 21 |
| VIII. For Naval Prize, Slave Seizures, Bounties, &c. — see PRIZE AGENTS. |      | APPEALS - - -  | 21 |
| ALIENS - - -   | 11   | I. General Considerations with reference to —                            | 21 |
| I. General Principles with reference to —                                | 11   | II. Of the Courts of Appellate Jurisdiction -                            | 22 |
| II. Statutory Regulations with regard to —                               | 12   | 1. Generally - - -   | 22 |
| III. Alien Enemies - - -   | 12   | 2. From Vice-Admiralty Courts -  | 22 |
| 1. Who are to be considered as — et contra — see NATIONAL CHARACTER.     |      | 3. In Salvage Suits — see SALVAGE (civil).                               |    |
| 2. Of the proof of — - -   | 12   | III. From what Acts an Appeal lies — et contra - - -                     | 23 |
| 3. Of the disabilities attaching to —                                    | 12   | IV. Of the Right of Appeal - - -   | 23 |
| (a) How affected by the return of peace - - -                            | 14   | 1. Generally - - -   | 23 |
| (b) Exemptions from — - -  | 14   | 2. Of the Crown - - -  | 23 |
| 4. Of the forfeiture of the property of —                                | 15   | 3. How affected by Contempt in the Court below. - - -                    | 24 |
| (a) Exemptions - - -   | 15   | 4. By what Acts perempted — et contra -                                  | 24 |
| See FOREIGNERS.  |      | V. Of Proceedings in the Court below pending Appeal - - -                | 24 |
| ALLEGATIONS - - -  | 16   | 1. Generally - - -   | 24 |
| I. Of the Admission of — - -   | 16   | 2. After Inhibition served - - -   | 25 |
| 1. General consideration with reference to — - -                         | 16   | VI. Practice in - - -  | 26 |
| 2. Miscellanea - - -   | 16   | 1. As to time of Appeal - - -  | 26 |
| II. Exceptive Allegations - - -  | 17   | 2. As to the property in litigation -                                    | 26 |
| 1. General considerations with reference to — - -                        | 17   | 3. As to desertion and abandonment of —                                  | 26 |
| 2. Requisites to the admissibility of — -                                | 17   | 4. Miscellanea - - -   | 27 |
| 3. What matters are pleadable in — et contra - - -                       | 18   | 5. Pleadings in — see PLEADINGS.   |    |
| 4. When admissible — et contra - - -                                     | 18   | 6. In Vice-Admiralty Courts — see ADMIRALTY, cap. VII. sec. 2. div. (b). |    |
| 5. Of the suspension of the admission of — until the hearing - - -       | 19   | 7. In cases of Prize — see PRIZE, PRIZE AGENT.                           |    |
|  |      | 8. In cases of Salvage — see SALVAGE (civil).                            |    |
|  |      | 9. As to Costs incurred in the Court below — see COSTS.                  |    |
|  |      | VII. In Slave Seizures — see SLAVE TRADE.                                |    |

# INDEX OF TITLES EXTENDED.

xix

|   |         |
|---|---------|
| APPEARANCE -  | Page 28 |
| <hr/>   |         |
| ASSIGNEES -   | 28      |
| <hr/>   |         |
| ATTACHMENT -  | 28      |
| <hr/>   |         |
| I. Of the Practice of the High Court of Admiralty with reference to —   | 29      |
| II. Where granted -   | 29      |
| III. Where refused -  | 30      |
| IV. Enforcement of — where postponed  | 30      |
| V. Where superseded — et contra   | 30      |
| See CONFIRMATION.   |         |
| <hr/>   |         |
| AVERAGE -   | 31      |
| <hr/>   |         |
| I. Of the various Descriptions of Average, and the Principles thereof   | 31      |
| II. Of the Jurisdiction of the High Court of Admiralty with reference to —  | 32      |
| III. Where the Liability to general Average attaches  | 32      |
| IV. Where the Liability to general Average does not attach  | 32      |
| V. On what Property the Liability to general Average attaches — et contra   | 33      |
| VI. References to Registrar and Merchants as to —   | 33      |
| <hr/>   |         |
| BAIL -  | 33      |
| <hr/>   |         |
| I. Of Bail Bonds generally -  | 33      |
| 1. From major to minor part owners for the safe return of the ship from voyages of which the latter disapprove — see OWNERS, BONDS. |         |
| 2. To secure the payment of costs — see SECURITY FOR COSTS.   |         |
| 3. On the withdrawal of the property in dispute pending appeal — see APPEAL, PRIZE.   |         |
| 4. By prize agents — see PRIZE AGENTS.  |         |
| II. Of the Jurisdiction of the High Court of Admiralty as to —  | 34      |
| III. Of the Liability of —  | 34      |
| IV. What will amount to a release of — et contra  | 35      |

|  |         |
|--|---------|
| V. Of Proceedings against —  | Page 35 |
| VI. Practice as to —   | 35      |
| VII. Miscellaneous —   | 36      |
| See BONDS.   |         |
| <hr/>  |         |
| BLOCKADE -   | 36      |
| <hr/>  |         |
| I. General Considerations as to —  | 37      |
| II. Of the Right of —  | 37      |
| III. Of the Rights and Duties of the Blockading Force                        | 38      |
| IV. What is sufficient to constitute a Blockade — et contra                  | 38      |
| V. Of the Construction of —  | 38      |
| 1. As to the extent of —   | 38      |
| 2. As to partial relaxations of —  | 38      |
| VI. Of the Maintenance of —  | 38      |
| VII. Of the Continuance of —   | 39      |
| 1. What acts will constitute a cessation of — et contra                      | 39      |
| 2. Where held to be relaxed — et contra                                      | 39      |
| VIII. Of the Resumption of —   | 39      |
| IX. What Circumstances will vitiate — et contra                              | 40      |
| X. Peculiar Cases of —   | 40      |
| XI. Breaches of — et contra  | 40      |
| (with reference to the knowledge of the blockade by the delinquent vessels.) |         |
| 1. Warning where necessary — et contra                                       | 40      |
| 2. Of the sufficiency of notice  | 40      |
| 3. Of the proof of knowledge   | 40      |
| 4. Of the notification of —  | 41      |
| 5. After notification  | 41      |
| (a) Of the time allowed for notification to take effect                      | 41      |
| 6. Of the notification of revocation of —                                    | 42      |
| 7. Other cases   | 42      |
| XII. Breaches of — et contra (by Ingress)                                    | 42      |
| 1. What is sufficient to constitute ingress — et contra                      | 42      |
| 2. Of the legal presumption arising from ingress                             | 42      |
| 3. What acts will amount to — et contra                                      | 42      |
| (a) Effect of destination to a blockaded port                                | 43      |
| (b) Deviation and concealed destination                                      | 43      |
| (c) Notwithstanding contingent destination                                   | 44      |

|   | Page |   | Page |
|---|------|---|------|
| 4. <i>Trading by British vessels to neutral blockaded ports</i> - - -                       | 44   | 1. <i>Generally</i> - - -   | 53   |
| 5. <i>By merchants of African states</i> -  | 44   | 2. <i>To restrain proceedings thereon in the High Court of Admiralty</i> -                    | 54   |
| 6. <i>Approaching the blockaded port.</i>   |      | IV. <i>What Vessels may be the Subject of—</i>  |      |
| (a) <i>To make inquiries as to the existence of the blockade</i> -                          | 44   | <i>et contra</i> - - -  | 54   |
| (b) <i>For other purposes</i> -   | 44   | V. <i>On foreign Ships engaged in Voyages to and from the East Indies</i> -                   | 54   |
| XIII. <i>Breaches of— et contra (by Egress)</i> -   | 45   | 1. <i>Statutory regulations with regard to—</i>   | 54   |
| 1. <i>What acts will amount to— et contra</i>   | 45   | VI. <i>Who may hypothecate</i> - - -  | 55   |
| 2. <i>Of the effect of egress</i> -   | 45   | 1. <i>Owners and part owners</i> -  | 55   |
| 3. <i>Egress with cargo shipped before the blockade</i> -                                   | 45   | 2. <i>Masters (original and substituted)</i> -  | 55   |
| 4. <i>Egress in ballast</i> - - -   | 45   | (a) <i>Under what limitations</i> -   | 56   |
| (a) <i>Where the vessel had entered before the blockade</i> -                               | 45   | 3. <i>Other parties</i> - - -   | 57   |
| (b) <i>After transfer between neutrals in the blockaded port</i> -                          | 45   | VII. <i>When Hypothecation may take place— et contra</i> - - -                                | 57   |
| 5. <i>Conveyance of neutral distressed mariners under orders of the neutral state</i>       | 46   | VIII. <i>Where Hypothecation may take place— et contra</i> - - -                              | 57   |
| 6. <i>Other cases</i> - - -   | 46   | IX. <i>Of the Duties of the Master before Hypothecation</i> - - -                             | 58   |
| XIV. <i>Breaches of— et contra</i> - - -  | 46   | X. <i>What Instruments are to be considered as— et contra</i> - - -                           | 58   |
| 1. <i>Acts in the blockading port amounting to— et contra</i> - - -                         | 46   | XI. <i>Of the Construction of—</i> - - -  | 59   |
| 2. <i>Other cases.</i> - - -  | 46   | 1. <i>Generally</i> - - -   | 59   |
| XV. <i>Breaches of—</i> - - -   | 46   | 2. <i>As expressing or implying maritime risk— et contra</i> - - -                            | 60   |
| 1. <i>When the offence is terminated— et contra</i> - - -                                   | 46   | 3. <i>As to the commencement of the risk</i> -  | 60   |
| 2. <i>Liability of cargo where affected by the delinquency of the ship— et contra</i> - - - | 47   | 4. <i>With reference to capture</i> - - -   | 60   |
| 3. <i>Acts of agents how far affecting their principals, owners of cargo</i> -              | 47   | XII. <i>Of Lenders on—</i> - - -  | 60   |
| 4. <i>Exemptions from forfeiture in respect of—</i> - - -                                   | 48   | 1. <i>Who may be— et contra</i> - - -   | 60   |
| (a) <i>Treaty of free ship, free goods</i>  | 48   | 2. <i>Of the bondholder's title</i> - - -   | 61   |
| (b) <i>Licences where exempting— et contra</i> - - -  | 48   | 3. <i>Of the rights of—</i> - - -   | 61   |
| (c) <i>Permission and misinformation of captors</i> - - -                                   | 48   | 4. <i>Of the duties of—</i> - - -   | 62   |
| (d) <i>On grounds of necessity and distress</i> - - -                                       | 48   | 5. <i>Of the liabilities and risks incurred by—</i> - - -                                     | 62   |
| (e) <i>Other excuses</i> - - -  | 49   | 6. <i>Of insurances by bondholders on bottomry loans</i> - - -                                | 62   |
| 5. <i>When captors may seize for—</i> -   | 49   | XIII. <i>Who may impugn—</i> - - -  | 63   |
| 6. <i>Practice in suits for—</i> - - -  | 49   | XIV. <i>Requisites to the validity of— et contra</i>  | 63   |
|   |      | 1. <i>Necessity for—</i> - - -  | 63   |
|   |      | 2. <i>Maritime risk</i> - - -   | 63   |
|   |      | 3. <i>Maritime interest</i> - - -   | 64   |
|   |      | XV. <i>Of the Validity of— et contra</i> -  | 64   |
|   |      | 1. <i>For what supplies bottomry may be had recourse to— et contra</i> - - -                  | 64   |
|   |      | 2. <i>With reference to the voyage, and the owner's cognizance and approval thereof</i> - - - | 65   |
|   |      | 3. <i>Given under duress</i> - - -  | 65   |
|   |      | 4. <i>On the ground of a sufficient necessity</i> - - -                                       | 66   |
|   |      | (a) <i>Where proved</i> - - -   | 66   |
|   |      | (b) <i>Where not proved</i> - - -   | 66   |

---

BONDS - - - 49

---

BOTTOMRY - - - 50

---

|  |    |
|--|----|
| I. <i>General consideration with reference to—</i>                               | 51 |
| II. <i>Of the Jurisdiction of the High Court of Admiralty with reference to—</i> | 52 |
| III. <i>Of the Jurisdiction of Courts of Equity with reference to—</i>           | 53 |

|  | Page |
|--|------|
| 5. <i>Where the advances were made in contemplation of bottomry—et contra</i>        | 67   |
| 6. <i>Where the advances might have been obtained on personal credit</i>             | 67   |
| 7. <i>For advances made on personal credit</i>                                       | 68   |
| (a) <i>Of the effect thereof</i>   | 68   |
| (b) <i>Of the effect of a right of lien on the ship for such advances</i>            | 68   |
| (c) <i>Where proved</i>  | 68   |
| (d) <i>Where not proved</i>  | 68   |
| 8. <i>Where given as collateral securities</i>                                       | 69   |
| 9. <i>Where bills of exchange are taken as collateral securities</i>                 | 69   |
| 10. <i>Where good in part and bad in part</i>  | 69   |
| 11. <i>Other circumstances affecting—et contra</i>                                   | 68   |
| XVI. <i>Of Deviations from the Voyage described in—</i>                              | 70   |
| XVII. <i>On Cargo</i>  | 70   |
| 1. <i>Of the right to hypothecate</i>  | 71   |
| (a) <i>Authority of principal as binding remaining owners</i>                        | 71   |
| 2. <i>Of the bondholders' rights against—</i>  | 71   |
| XVIII. <i>Of the Payment of—</i>   | 71   |
| 1. <i>When due—et contra</i>   | 71   |
| 2. <i>Of the personal responsibility of the owners and master for—</i>               | 72   |
| 3. <i>Of the relative liability and contribution of ship, freight, and cargo to—</i> | 72   |
| 4. <i>Of the precedence of bottomry bonds over other claims</i>                      | 74   |
| 5. <i>Of the precedence of later over prior dated bonds</i>                          | 75   |
| 6. <i>Miscellanea</i>  | 76   |
| XIX. <i>Of the Accounts on—</i>  | 76   |
| 1. <i>Of the reference thereof to registrar and merchants</i>                        | 76   |
| 2. <i>Charges therein allowed—et contra</i>  | 76   |
| 3. <i>Of the allowance of premiums in—</i>   | 77   |
| 4. <i>Of the allowance of interest on—</i>   | 78   |
| XX. <i>Practice in Suits on—</i>   | 78   |
| 1. <i>As to the institution of proceedings before the bond is due</i>                | 78   |
| 2. <i>Of the limitation as to time in the institution of proceedings</i>             | 79   |
| 3. <i>As to pleadings in—</i>  | 79   |
| 4. <i>Of the proof of—</i>   | 79   |
| 5. <i>Miscellanea</i>  | 80   |
| XXI. <i>Costs in Causes of—</i>  | 80   |
| <br>BROKER   | 80   |

|  | Page |
|--|------|
| CAPITULATIONS  | 81   |
| CAPTORS  | 81   |
| I. <i>Of the Parties entitled to effect Captures—et contra</i>   | 82   |
| II. <i>Of the Parties entitled to the Privileges of—et contra</i>  | 82   |
| III. <i>What Seizures will entitle Parties to be considered as—et contra</i>   | 83   |
| 1. <i>Generally</i>  | 83   |
| 2. <i>Among different seizers</i>  | 83   |
| IV. <i>Captures by Tenders, other Vessels, and Boats, where entitling the Ships to which they are attached—et contra</i> | 84   |
| V. <i>Of the Rights of—</i>  | 85   |
| 1. <i>Generally</i>  | 85   |
| 2. <i>Where barred—et contra</i>   | 85   |
| 3. <i>Miscellanea</i>  | 85   |
| 4. <i>To freight—see FREIGHT.</i>  |      |
| 5. <i>To prize—see PRIZE, FLAG SHARE.</i>  |      |
| VI. <i>Of the Duties of—</i>   | 86   |
| 1. <i>Of the prize master</i>  | 86   |
| 2. <i>To take prizes to convenient ports for adjudication</i>  | 86   |
| 3. <i>In other respects</i>  | 86   |
| VII. <i>Of the Responsibilities of—</i>  | 87   |
| 1. <i>Generally</i>  | 87   |
| 2. <i>Of owners of privateers</i>  | 88   |
| 3. <i>Of commanders</i>  | 88   |
| 4. <i>In cases of justifiable seizure</i>  | 88   |
| 5. <i>In cases of unjustifiable seizure</i>  | 88   |
| 6. <i>Where the prize was protected by a British licence</i>   | 89   |
| 7. <i>Where using due care and skill—et contra</i>   | 89   |
| 8. <i>In cases of recapture and subsequent loss</i>  | 89   |
| 9. <i>In cases of loss of prize when a pilot was on board</i>  | 89   |
| 10. <i>From taking prizes to inconvenient ports for adjudication</i>   | 89   |
| 11. <i>For treatment of prize crew</i>   | 90   |
| 12. <i>For prize property stolen or embezzled</i>  | 90   |
| 13. <i>In respect of delay in proceedings</i>  | 90   |
| 14. <i>After lapse of time and irregular adjudication</i>  | 90   |
| 15. <i>Other cases</i>   | 90   |
| 16. <i>Of the limitation of—</i>   | 91   |
| 17. <i>Where released—et contra</i>  | 91   |
| 18. <i>Questions of—how raised</i>   | 91   |

|   | Page |  | Page |
|---|------|--|------|
| 19. <i>For freight</i> —see <b>FREIGHT</b> , cap. VII.  |      | <b>COLOURS</b> -   | 99   |
| See <b>COSTS</b> and <b>DAMAGES</b> , <b>SLAVE TRADE</b> .  |      |  |      |
| VIII. Of the expenses of—   | 91   | I. Statutory Regulations with regard to—   | 99   |
| 1. <i>What expenses allowed—et contra</i>   | 91   | II. Cases of Proceedings against Masters of Private Ships for hoisting illegal Colours - | 99   |
| 2. <i>Over what claims preferred</i>  | 92   |  |      |
| 3. <i>Costs of—where given—et contra</i>  | 92   |  |      |
|   |      | <b>COMMISSIONERS</b> -   | 99   |
| <b>CAPTURE</b> -  | 92   |  |      |
|   |      | <b>CONSULS</b> -   | 100  |
| I. Of the Jurisdiction of Courts as to—   | 92   |  |      |
| II. What amounts to—et contra   | 92   | <b>CONTEMPT</b> -  | 101  |
| III. When completed—et contra   | 93   |  |      |
| IV. Where barred—et contra  | 93   | <b>CONTINUITY OF VOYAGE</b> -  | 102  |
| See <b>CAPTORS</b> , <b>DROITS OF ADMIRALTY</b> , <b>JOINT CAPTURE</b> , <b>PRIZE</b> , <b>RECAPTURE</b> , <b>SLAVE TRADE</b> . |      |  |      |
|   |      | <b>CONTRABAND</b> -  | 103  |
| <b>CARGO</b> -  | 93   |  |      |
|   |      | I. What Articles are—and when  | 103  |
| <b>CARTEL</b> -   | 94   | 1. <i>Provisions</i>   | 103  |
|   |      | 2. <i>Hemp</i>   | 104  |
| I. General Considerations as to—  | 94   | 3. <i>Pitch and Tar</i>  | 104  |
| II. Of the Privileges of—   | 95   | 4. <i>Despatches</i>   | 105  |
| 1. <i>Vessels where entitled to—et contra</i>   | 95   | 5. <i>Timber</i>   | 105  |
| 2. <i>What acts will work a forfeiture of—et contra</i>   | 95   | 6. <i>Other articles</i>   | 106  |
| III. Miscellaneous  | 95   | II. Destination of—how affecting   | 107  |
|   |      | III. Of the Right of Pre-emption of—   | 107  |
| <b>CHARTER PARTY</b> -  | 96   | 1. <i>Generally</i>  | 107  |
|   |      | 2. <i>Of the allowance of claimants' expenses in such cases</i>                          | 108  |
| <b>CINQUE PORTS</b> -   | 96   | IV. Of the Penalties of—   | 108  |
|   |      | 1. <i>When and how long attaching—</i>   | 108  |
| <b>CLAIMANTS</b> -  | 96   | 2. <i>As affecting the ship</i>  | 109  |
|   |      | 3. <i>As affecting the rest of the cargo</i>   | 109  |
| I. In Opposition to the Depositions and Ship's Papers   | 96   | 4. <i>As affecting the allowance of freight and expenses</i>                             | 110  |
| II. In Cases of Capture of Algerine Property  | 97   | 5. <i>Exemptions from—under treaties, where allowed—et contra</i>                        | 110  |
| III. Of the Onus of Proof to be sustained by—   | 97   | V. Reference to ascertain the Character of Cargo   | 110  |
| IV. Of the Rights of—   | 97   | VI. Miscellaneous Cases  | 110  |
| 1. <i>Generally</i>   | 97   | VII. Costs in Cases of—  | 110  |
| 2. <i>How barred—et contra</i>  | 97   |  |      |
| V. Miscellaneous  | 98   | <b>CONVOY</b> -  | 111  |
| See <b>NEUTRALS</b> .   |      |  |      |
|   |      | I. What is—et contra   | 111  |
|   |      | II. Statutory Regulations with regard to   | 111  |



|  | Page  |
|--|-------|
| III. Proceedings against Parties for disobedience of—  | - 111 |
| IV. Of the Right of Conveying Ships to effect Captures and Recaptures                          | - 111 |
| V. Miscellaneous   | - 111 |
| <hr/>  |       |
| COSTS  | - 112 |
| <hr/>  |       |
| I. Of the Allowance of—  | - 112 |
| 1. Generally   | - 112 |
| 2. Of pleas not admitted   | - 112 |
| 3. Of irrelevant matter  | - 112 |
| 4. Of review of taxation   | - 112 |
| 5. Of enforcing payment  | - 112 |
| 6. In prohibition  | - 113 |
| 7. <i>Fiatics</i> of witnesses   | - 113 |
| (a) Generally  | - 113 |
| (b) Foreign witnesses  | - 114 |
| 8. <i>Counsel's Clerks' Fees</i>   | - 114 |
| II. Of the Liability to Payment of—  | - 114 |
| 1. Generally   | - 114 |
| 2. Where barred— <i>et contra</i>  | - 115 |
| III. Of the Crown  | - 115 |
| IV. Of the Suspension of Proceedings until Payment of—   | - 115 |
| V. Of the Taxation and Enforcement in the Court of Appeal of Costs incurred in the Court below | - 115 |
| VI. Miscellaneous  | - 115 |
| VII. In Causes of Bottomry—see BOTTOMRY.   |       |
| VIII. Of Captors—see CAPTORS.  |       |
| IX. In Cases of Contraband—see CONTRABAND.   |       |
| X. In Causes of Damage—see DAMAGE.   |       |
| XI. In Causes of Joint-Capture—see JOINT-CAPTURE.  |       |
| XII. In Causes of Possession—see POSSESSION.   |       |
| XIII. Of the Responsibility of Proctors for—see PROCTORS.                                      |       |
| XIV. As between Proctor and Client—see PROCTORS.   |       |
| XV. In Causes of Salvage—see SALVAGE (civil).  |       |
| XVI. Security for—see SECURITY FOR COSTS.  |       |
| XVII. In Slave Seizures—see SLAVE TRADE.   |       |
| XVIII. In Cases of Tender—see TENDER.  |       |
| XIX. In Causes of Mariners' Wages—see WAGES.   |       |

|                   |       |
|-------------------|-------|
| COSTS AND DAMAGES | - 116 |
|-------------------|-------|

|        |       |
|--------|-------|
| COURTS | - 116 |
|--------|-------|

|  |       |
|--|-------|
| I. Of the Jurisdiction of Courts of Equity   | - 116 |
| 1. <i>With reference to decisions in the Privy Council and by Commissioners for Adjustment of British Claims on France</i> | - 116 |
| 2. <i>Over Courts of Admiralty</i>   | - 117 |
| 3. <i>In matters of prize</i>  | - 117 |
| 4. <i>In cases of title to ships—see TITLE.</i>  |       |
| II. Miscellaneous  | - 117 |
| III. Of Courts of Admiralty and Vice-Admiralty—see ADMIRALTY.  |       |
| IV. Of Courts of Appeal—see APPEAL.  |       |
| V. Of the Court of the Cinque Ports—see CINQUE PORTS.  |       |
| VI. Of Courts of Prize—see PRIZE.  |       |
| VII. Of Courts for determining Salvage Claims—see SALVAGE (civil).   |       |
| VIII. Of the Courts of Mixed Commission for determining Slave Seizures—see SLAVE TRADE.                                    |       |
| IX. Of Courts for determining Claims of Mariners for Wages—see WAGES.  |       |

|       |       |
|-------|-------|
| CROWN | - 118 |
|-------|-------|

|   |       |
|---|-------|
| I. Of the Rights of—  | - 118 |
| 1. <i>Generally</i>   | - 118 |
| 2. <i>Of the delegation of—</i>   | - 118 |
| 3. <i>To the sea, havens, rivers, &amp;c.</i>   | - 118 |
| 4. <i>Over conquered countries</i>  | - 119 |
| 5. <i>To property of alien enemies</i>  | - 119 |
| 6. <i>To royal fish</i>   | - 119 |
| 7. <i>As to costs</i>   | - 120 |
| 8. <i>Miscellaneous</i>   | - 120 |
| 9. <i>To freight—see FREIGHT.</i>   |       |
| 10. <i>To prize—see PRIZE.</i>  |       |
| 11. <i>To wreck—see WRECK.</i>  |       |
| II. Of the property of—   | - 120 |
| 1. <i>Generally</i>   | - 120 |
| 2. <i>Of the liability of vessels of the Crown in cases of damage committed by them—see DAMAGE.</i> |       |
| 3. <i>Of the liability of—to the Navigation Laws—see NAVIGATION LAWS.</i>                           |       |
| 4. <i>Of neutral sovereigns—see NEUTRALS.</i>   |       |

|   | Page  |  | Page  |
|---|-------|--|-------|
| III. Of Grants from—  | - 190 | (a) <i>As affecting customs of rivers at variance therewith</i>  | - 135 |
| 1. <i>Of the construction of</i> —  | - 190 | 4. <i>With reference to the rate of speed</i>  | - 136 |
|   |       | 5. <i>When on the starboard tack</i>   | - 136 |
| CUSTOMS AND USAGES  | - 190 | VIII. Miscellaneous Cases of—  | - 136 |
|   |       | IX. Of the Onus probandi in Causes of—   | - 137 |
| DAMAGE  | - 121 | X. Of the effect of a verdict in an Action at Law on a Suit in the Court of Admiralty in respect of the same Collision | - 137 |
| I. Of the Jurisdiction of the High Court of Admiralty in Causes of—   | - 122 | XI. Of the Owner's Responsibility for—the Limitations thereof, and the Exemptions therefrom—see OWNERS.                |       |
| 1. <i>Generally</i>   | - 122 | XII. Of the Responsibility for—  | - 138 |
| 2. <i>Over foreign vessels</i>  | - 122 | 1. <i>Of masters, pilots and others</i>  | - 138 |
| II. Of the Right to Compensation for—   | - 123 | 2. <i>Where occasioned by vessels of the Crown</i>   | - 138 |
| 1. <i>Generally</i>   | - 123 | XIII. Pleadings in Causes of—  | - 138 |
| 2. <i>In cases of inevitable accident</i>   | - 123 | XIV. Practice in Causes of—  | - 138 |
| 3. <i>Where both vessels are to blame</i>   | - 124 | XV. Costs in Causes of—  | - 139 |
| (a) <i>In suits in the Court of Admiralty</i>   | - 124 | XVI. Miscellanea   | - 140 |
| (b) <i>In suits at common law</i>   | - 125 |  |       |
| 4. <i>Of the priority of lien of a successful suitor in a cause of damage</i>   | - 126 | DAMAGE (PERSONAL)  | - 140 |
| 5. <i>Of the distribution of proceeds of sale of the damaging vessel among different claimants in respect of the same collision</i> | - 127 |  |       |
| III. Of the Measure of Compensation for—  | - 127 | I. Of the Jurisdiction of the High Court of Admiralty and Magistrate as to—  | - 140 |
| 1. <i>General principles with regard to</i> —   | - 127 | II. Of the Right to inflict Punishment, and the Responsibilities attending the same                                    | - 141 |
| 2. <i>Consequential damage</i>  | - 127 | 1. <i>Of the master</i>  | - 141 |
| IV. Of the Rights and Responsibilities of Cargo in Cases of—  | - 128 | 2. <i>Of his officers</i>  | - 142 |
| V. Of the Duties of Vessels generally in order to avoid Collision   | - 128 | III. Of the Duties of the Master before inflicting Punishment  | - 142 |
| 1. <i>General rules with regard to</i>  | - 128 | IV. Of the Master's Justification in Suits for—  | - 142 |
| 2. <i>To keep a proper look-out</i>   | - 129 | 1. <i>Generally</i>  | - 142 |
| 3. <i>As to the complement of men</i>   | - 129 | 2. <i>Where held sufficient—et contra</i>  | - 142 |
| 4. <i>With reference to vessels at anchor</i>   | - 129 | V. Claims for—where not proved   | - 143 |
| 5. <i>In cases of launch</i>  | - 129 |  |       |
| VI. Of the duties of Sailing Vessels in order to avoid Collision  | - 130 | DEMURRAGE  | - 143 |
| 1. <i>As affected by the wind</i>   | - 130 |  |       |
| 2. <i>When on the larboard or starboard tack</i>  | - 131 | DERELICTS  | - 144 |
| 3. <i>As to the quantity of sail to be carried</i>  | - 132 |  |       |
| 4. <i>As to carrying lights</i>   | - 132 | I. What are—et contra  | - 144 |
| 5. <i>Of the application thereto of the Trinity House Regulations for Steamers</i>  | - 132 | II. Of the Right to—   | - 144 |
| VII. Of the Duties of Steam-Vessels in order to avoid Collision   | - 133 | III. Of the Salvage of—see SALVAGE (civil).  |       |
| 1. <i>Generally</i>   | - 133 |  |       |
| 2. <i>Statutory regulations thereon</i>   | - 133 |  |       |
| <i>Of The Trinity House Regulations thereon and the construction thereof</i>  | - 134 |  |       |

|   | Page |
|---|------|
| IV. As to the Percentage to Greenwich Hospital on Salvage of — by H. M. Ships, and as to the unclaimed and forfeited Shares thereof — see GREENWICH HOSPITAL. |      |

**DROITS OF ADMIRALTY - 144**

|  |       |
|--|-------|
| I. General Considerations as to —  | - 144 |
| II. What are — et contra   | - 145 |
| 1. Captures from the land  | - 145 |
| 2. Captures in ports, roads, &c.   | - 145 |
| 3. Captures by non-commissioned persons or vessels   | - 147 |
| 4. Captures by privateers between the application for, and grant of, letters of marque                 | - 147 |
| 5. Captures by privateers duly commissioned, but not having the master on board at the time of capture | - 148 |
| 6. Derelict property   | - 148 |
| 7. Other cases   | - 148 |

III. As to the Percentage payable to Greenwich Hospital on — see GREENWICH HOSPITAL.

IV. As to the Rates of Salvage of — see SALVAGE (civil).

**EVIDENCE - 150**

|  |       |
|--|-------|
| I. What extra-articulate — et contra   | - 150 |
| 1. Of objections to —  | - 150 |
| II. What admissible — et contra  | - 150 |
| III. Of secondary evidence   | - 151 |
| IV. Documentary  | - 151 |
| 1. Generally   | - 151 |
| 2. Of the construction of —  | - 151 |
| 3. Of the authentication of —  | - 151 |
| 4. Of the right to the production of — and the inference arising from its non-production       | - 151 |
| 5. Sentences of foreign Courts generally   | - 152 |
| 6. Sentences of foreign Courts of Admiralty  | - 152 |
| 7. Ship's log  | - 152 |
| 8. Correspondence of master or agent   | - 153 |
| 9. Copies of papers in the custody of the General Register Office and of Collectors of Customs | - 153 |
| 10. Other documents  | - 154 |
| 11. Licences — see LICENCES.   |       |
| 12. Mariners' contracts — see MARINERS' CONTRACTS.   |       |
| 13. Protests — see DAMAGE, SALVAGE, (civil).   |       |

|   |       |
|---|-------|
| 14. Ships' Registers — see SHIPS' REGISTERS.          |       |
| V. Parol Declarations                                 | - 154 |
| 1. Of agent, how affecting principal                  | - 154 |
| 2. Of various parties                                 | - 154 |
| VI. Admissions  | - 154 |
| VII. Privileged Communications                        | - 155 |
| VIII. Opinions of scientific Persons                  | - 156 |
| IX. Of Foreign Law                                    | - 156 |
| X. Of Parties dead or beyond Seas                     | - 156 |
| XI. Of the Admission of Affidavits after Publication  | - 157 |
| XII. Of the Inspection of —                           | - 157 |
| XIII. Miscellaneous                                   | - 157 |
| See AFFIDAVITS, ANSWERS, PLEADINGS, WAGES, WITNESSES. |       |

**EXAMINERS - 157**

**FACTORS - 158**

**FLAG SHARE - 158**

|   |       |
|---|-------|
| I. Of the Jurisdiction of Courts of Equity as to —  | - 158 |
| II. Over what Property the Right to a Flag Share extends  | - 158 |
| III. Claims to — where pronounced for — et contra   | - 158 |
| 1. With reference to the claimant's authority to act as a flag officer                                    | - 158 |
| 2. With reference to the limits of the claimant's station   | - 159 |
| 3. As under orders of the claiming Admiral at the time of capture — et contra                             | - 160 |
| 4. Where the claiming Admiral had given up his command, and was on his return home at the time of capture | - 161 |
| 5. Of an Admiral of an allied force   | - 162 |

**FOREIGNERS - 162**

**FRAUD - 162**

**FREIGHT - 164**

|  |       |
|--|-------|
| I. Of the Jurisdiction of the High Court of Admiralty as to, — | - 164 |
|--|-------|

|   | Page |  | Page  |
|---|------|--|-------|
| II. Of Proceedings to bring Freight into the Registry of the Court of Admiralty - - -       | 165  | <b>FURTHER PROOF</b>   | - 178 |
| III. Of the Right to, — - -   | 165  | I. Of the Requisites of— - -   | 173   |
| 1. <i>Generally</i> - - -   | 165  | II. Where the Court may require— - -   | 173   |
| 2. <i>In cases of partial performance of the contract of affreightment</i> - - -            | 165  | III. Where required— et contra - - -   | 174   |
| 3. <i>Where the completion of the contract of affreightment is prevented</i> - - -          | 166  | IV. How far re-opening the Cause - - -   | 174   |
| (a) <i>By the fault or incapacity of the ship</i> - - -                                     | 166  | V. Where allowed— et contra - - -  | 174   |
| (b) <i>By the fault or incapacity of the cargo</i> - - -                                    | 166  | 1. <i>To neutrals generally</i> - - -  | 174   |
| (c) <i>By the fault or incapacity of both ship and cargo</i> - - -                          | 167  | 2. <i>To verify the ship's papers</i> - - -  | 174   |
| (d) <i>By capture</i> - - -   | 167  | 3. <i>To disprove the depositions and ship's papers</i> - - -                      | 174   |
| 4. <i>Where the contract is in substance performed— et contra</i> - - -                     | 167  | 4. <i>In cases disclosing fraud, mala fides, or suspicious circumstances</i> - - - | 175   |
| 5. <i>Where the completion of the contract is interrupted but ultimately effected</i> - - - | 167  | 5. <i>In cases of purchase from the enemy</i> - - -                                | 175   |
| 6. <i>Where the completion of the contract is effected by transshipment of cargo</i> - - -  | 168  | 6. <i>In cases of false destination</i> - - -                                      | 175   |
| 7. <i>Miscellanea</i> - - -   | 168  | 7. <i>In cases of spoliation of papers</i> - - -                                   | 175   |
| IV. Of the Right of Parties to, — - -   | 168  | 8. <i>Where there was delay in exhibiting—</i> - - -                               | 176   |
| 1. <i>The Crown</i> - - -   | 168  | 9. <i>A second time</i> - - -  | 176   |
| 2. <i>Captors</i> - - -   | 168  | 10. <i>Other cases</i> - - -   | 176   |
| 3. <i>Neutral shipowners</i> - - -  | 169  |  |       |
| (a) <i>Of the precedence of—</i> - - -  | 169  | <b>GREENWICH HOSPITAL</b> - - -  | 176   |
| 4. <i>Bottomry bondholders</i> - - -  | 169  | I. Of the Percentage on Prize, &c., payable to— - -                                | 176   |
| 5. <i>Mortgagees</i> - - -  | 169  | 1. <i>Statutory regulations thereon</i> - - -                                      | 176   |
| V. What will bar the Right to— et contra - - -  | 170  | (a) <i>Of the construction thereof</i> - - -                                       | 177   |
| VI. Of the Lien for— - -  | 170  |  |       |
| VII. Of the Liability to the Payment of— - -  | 171  | <b>HEAD MONEY</b> - - -  | 178   |
| VIII. Of the Assignment of— - -   | 171  | I. Of the Jurisdiction of the Court of Admiralty as to— - -                        | 178   |
| IX. Of the Payment of— - -  | 172  | II. Of the Right to— - -   | 178   |
| 1. <i>Of the calculation of—</i> - - -  | 172  | 1. <i>What forces entitled to— et contra</i> - - -                                 | 178   |
| 2. <i>Of deductions from—</i> - - -   | 172  | 2. <i>On what prizes and crews attaching— et contra</i> - - -                      | 178   |
| 3. <i>Of the sale of perishable cargo to defray—</i> - - -                                  | 172  | 3. <i>What services are sufficient to found claims to— et contra</i> - - -         | 179   |
| 4. <i>Of the distribution of—</i> - - -   | 172  | 4. <i>In cases of joint-capture</i> - - -  | 179   |
| 5. <i>Practice with reference to—</i> - - -   | 173  | (a) <i>Generally</i> - - -   | 179   |
| (a) <i>As to making it a charge on the cargo</i> - - -                                      | 173  | (b) <i>In general engagements, or by combined operations</i> - - -                 | 180   |
| (b) <i>As to time of application for—</i> - - -   | 173  | (c) <i>In particular combats</i> - - -   | 180   |
| X. Of the Rights and Duties of Masters with reference to—see Masters.                       |      |  |       |
| XI. Of the Liability of—  |      | <b>IDENTITY</b> - - -  | 181   |
| 1. <i>For losses or damage—see OWNERS.</i>  |      |  |       |
| 2. <i>For salvage—see SALVAGE (civil), SALVAGE (military).</i>                              |      | <b>INHIBITION</b> - - -  | 181   |
|   |      |  |       |
|   |      | <b>INTEREST</b> - - -  | 181   |

|   |               |
|---|---------------|
| INTERVENERS -   | Page<br>- 182 |
| <hr/>   |               |
| JOINT-CAPTURE -   | - 182         |
| <hr/>   |               |
| I. Of the Jurisdiction of the High Court of Admiralty in Cases of—  | - 183         |
| II. Of the Principles of—   | - 183         |
| III. Of the Requisites of Proof in Causes of—   | - 183         |
| IV. Of the Onus of Proof in Causes of—  | - 184         |
| V. Of the Responsibility of Joint-Captors   | - 184         |
| VI. What Forces are entitled to claim as Joint-Captors—et contra  | - 184         |
| 1. <i>Land forces</i>   | - 184         |
| 2. <i>Allied forces</i>   | - 185         |
| 3. <i>Convoying ships</i>   | - 185         |
| 4. <i>Ships having a sufficient military character impressed upon them—et contra</i>                                    | - 185         |
| 5. <i>Non-commissioned vessels</i>  | - 185         |
| VII. What Services will entitle to the Benefits of—et contra  | - 185         |
| 1. <i>Sight</i>   | - 185         |
| 2. <i>Chase</i>   | - 187         |
| 3. <i>Co-operation and association</i>  | - 188         |
| (a) <i>Generally</i>  | - 188         |
| (b) <i>In blockade</i>  | - 189         |
| (c) <i>Where ships associated with the capturing force were detached prior to the capture</i>                           | - 190         |
| 4. <i>Services antecedent or subsequent only</i>  | - 190         |
| 5. <i>Diversion of the course of the prize</i>  | - 190         |
| 6. <i>The assistance of boats and tenders, how far entitling the ships to which they belong</i>                         | - 190         |
| VIII. Claims of—where pronounced for—et contra  | - 191         |
| 1. <i>Where the asserted joint-captor was prevented rendering more efficient assistance by the orders of the captor</i> | - 191         |
| 2. <i>Where fraud is charged against the actual captor in preventing the co-operation of the joint-captor</i>           | - 191         |
| 3. <i>In cases of alleged non-assertion and disclaimer of interest at the time by the asserted joint-captor</i>         | - 192         |
| 4. <i>On written admissions (inter alia) of the actual captor</i>   | - 192         |
| IX. Rules of Distribution in Causes of—   | - 192         |
| X. Practice in Causes of—   | - 192         |
| XI. Costs in Causes of—   | - 192         |
| See FLAG SHARE, HEAD MONEY, SLAVE TRADE.  |               |

|   |               |
|---|---------------|
| LAW OF OLERON   | Page<br>- 193 |
| <hr/>   |               |
| LETTERS OF MARQUE   | - 193         |
| <hr/>   |               |
| LAW OF NATIONS  | - 194         |
| <hr/>   |               |
| LICENCES  | - 195         |
| <hr/>   |               |
| I. Of the Grant of—   | - 195         |
| II. Of the Construction and Effect of—  | - 195         |
| 1. <i>Generally</i>   | - 195         |
| 2. <i>As to the performance of the conditions thereof</i>   | - 197         |
| 3. <i>As to the parties entitled to be considered as the nominees thereof</i>                                     | - 197         |
| 4. <i>Where the terms thereof are sufficient to protect enemy interest—et contra</i>                              | - 198         |
| 5. <i>Where used for the ships of another country than that for which they were granted</i>                       | - 200         |
| 6. <i>How affected by a change in the national character of the nominees</i>                                      | - 200         |
| 7. <i>How affected by a misdescription of the nominees</i>  | - 200         |
| 8. <i>Where assigned by the nominees</i>  | - 201         |
| 9. <i>How affected as to neutrals by the existence of partial enemy interest</i>                                  | - 201         |
| 10. <i>Where the date or grant thereof is posterior to the commencement of the voyage</i>                         | - 201         |
| 11. <i>Where the date or grant thereof is posterior to the capture</i>  | - 201         |
| 12. <i>Where the time therein limited had expired</i>   | - 201         |
| (a) <i>Generally</i>  | - 201         |
| (b) <i>At the time of capture</i>   | - 202         |
| (c) <i>Where a new licence had been obtained but was not on board</i>   | - 202         |
| (d) <i>In licences to export</i>  | - 202         |
| 13. <i>As to the port of shipment</i>   | - 203         |
| 14. <i>As to intermediate and interdicted ports</i>   | - 203         |
| 15. <i>As to the port of destination</i>  | - 204         |
| 16. <i>How affected by a contingent ulterior destination</i>  | - 204         |
| 17. <i>As to the return voyage</i>  | - 204         |
| 18. <i>Other cases</i>  | - 204         |
| III. Of the Construction and Effect of—as to Cargo  | - 205         |
| 1. <i>In cases of British property on board enemy vessels disguised as neutrals, and having a British licence</i> | - 205         |
| 2. <i>Where cargo is taken, the licence directing to proceed in ballast</i>                                       | - 205         |

|   | Page  |  | Page  |
|---|-------|--|-------|
| 3. Where part of the cargo is not enumerated in the licence - | - 205 | VI. Of the Hiring and Discharge of —                         | - 215 |
| 4. Where there is an excess of cargo -                        | - 206 | VII. Of the Correction of —                                  | - 216 |
| 5. As to return cargoes -                                     | - 206 | VIII. Foreign Mariners, see MARINERS' CONTRACTS, WAGES -     | - 216 |
| 6. As to substituted cargo -                                  | - 206 |  |       |
| 7. Where the cargo licensed is shipped in two vessels -       | - 206 |  |       |
| IV. What Circumstances will vitiate — et contra -             | - 207 | MARINERS' CONTRACTS -  | 216   |
| 1. Fraud -  | - 207 | I. General Considerations as to —                            | - 216 |
| 2. Purchase of —  | - 207 | II. Statutory Enactments as to —                             | - 217 |
| 3. Alterations in —   | - 207 | III. Of the Construction of —                                | - 217 |
| 4. Carriage of contraband -                                   | - 207 | 1. Generally -   | - 217 |
| 5. Carriage of enemy correspondence -                         | - 207 | 2. As to specific covenants in —                             | - 217 |
| 6. Other circumstances -                                      | - 207 | 3. As to specification of the voyage -                       | - 218 |
| V. Of the Onus of Proof of —                                  | - 208 | 4. As to deviations from the voyage -                        | - 219 |
| 1. Generally -  | - 208 | IV. Of the Effect of —                                       | - 219 |
| 2. Where lost -   | - 208 | 1. Generally -   | - 219 |
| VI. Miscellaneous -   | - 209 | 2. Where no rate of wages is specified -                     | - 220 |
|   |       | See MARINERS, WAGES.   |       |
|   |       |  |       |
| LIENS -   | - 209 | MARSHALL -   | - 220 |
| I. Generally -  | - 210 |  |       |
| II. In Cases of Prize -                                       | - 211 |  |       |
| III. On Freight—see FREIGHT.                                  |       | MASTERS -  | - 221 |
| IV. Of Masters of Ships—see MASTERS.                          |       |  |       |
| V. Of Material Men—see MATERIAL MEN.                          |       | I. Of the Appointment of —                                   | - 221 |
| VI. Of Mortgagees—see MORTGAGEES.                             |       | II. Of the Rights and Duties of —                            | - 222 |
| VII. On Proceeds of Sale of Ships—see SHIPS.                  |       | 1. Generally -   | - 222 |
| VIII. On Ships' Registers—see SHIPS' REGISTERS.               |       | 2. As to cargo -   | - 222 |
| IX. For Mariners' Wages—see WAGES.                            |       | 3. To order repairs and supplies -                           | - 223 |
|   |       | 4. As to hypothecation—see BOTTOMRY.                         |       |
|   |       | 5. Of prize masters—see CAPTORS.                             |       |
|   |       | 6. As to colours—see COLOURS.                                |       |
|   |       | 7. As to convoy—see CONVOY.                                  |       |
|   |       | 8. As to freight—see FREIGHT.                                |       |
|   |       | 9. As to correction of mariners—see DAMAGE (personal).       |       |
| LIMITATIONS -   | - 212 | 10. Over pilots—see PILOTS.                                  |       |
|   |       | 11. As to pirates—see PIRATES.                               |       |
| LORDS OF MANORS -   | - 213 | 12. Where it is sought to dispossess them—see POSSESSION.    |       |
|   |       | 13. As to their private adventures—see PRIVATE ADVENTURE.    |       |
| MARINERS -  | - 214 | 14. In cases of capture—see PRIZE.                           |       |
| I. General Considerations as to —                             | - 214 | 15. As to sale of their ships—see TITLE.                     |       |
| II. Of the Rights of —  | - 214 | 16. As to their wages—see WAGES.                             |       |
| III. Of the Duties of —                                       | - 215 | 17. As to mariners—see MARINERS, MARINERS' CONTRACTS, WAGES. |       |
| IV. Of the Responsibilities of —                              | - 215 | III. Of the lien of —  | - 224 |
| V. Of the Rights, Duties, and Responsibilities of Mates -     | - 215 | IV. Of the Responsibilities of —                             | - 225 |

|   |       |
|---|-------|
| V. Of the Evidence of—  | Page  |
| VI. Of the Owner's Responsibility for the Acts of—see OWNERS. | - 225 |

## MATERIAL MEN - - 225

|                                  |       |
|----------------------------------|-------|
| I. Who are—et contra             | - 225 |
| II. Of the Lien of—              | - 225 |
| 1. On the ship                   | - 225 |
| (a) Generally                    | - 225 |
| (b) Whilst in possession thereof | - 226 |
| (c) For repairs, &c., abroad     | - 227 |
| 2. On proceeds                   | - 227 |

|  |       |
|--|-------|
| III. Of the Claims of—under 3 & 4 Vict. c. 65. s. 6. in respect of Necessaries supplied to Foreign Ships | - 228 |
| 1. Of the statutory enactment thereon, and the construction thereof                                      | - 228 |
| (a) Generally  | - 228 |
| (b) As to the term necessities   | - 228 |
| (c) Of the requisites of the Common Law to found claims there in respect of supplies, &c.                | - 229 |
| IV. Miscellaneous  | - 230 |

See BOTTOMRY, MASTERS.

## MERCHANDISE - - 230

## MORTGAGEES - - 230

|  |       |
|--|-------|
| I. Of the Jurisdiction of the High Court of Admiralty as to— | - 230 |
| II. Of the Title of—   | - 230 |
| III. Of the Rights of—                                       | - 232 |
| IV. Of the Liabilities of—                                   | - 232 |

## NATIONAL CHARACTER - 233

|  |       |
|--|-------|
| I. Of the National Character that will be imputed to Territories | - 233 |
| 1. From occupation by the enemy                                  | - 233 |
| 2. Wrested from the government of the enemy                      | - 234 |
| 3. Other cases   | - 234 |
| II. Of the National Character that will be imputed to Parties    | - 234 |
| 1. Generally   | - 234 |
| 2. From residence  | - 235 |
| (a) Generally  | - 235 |

|   |       |
|---|-------|
| (b) What is sufficient to constitute domicile—et contra                           | - 236 |
| (c) Of the changes of domicile  | - 237 |
| (d) Of agents, how affecting principals   | - 238 |
| (e) Being consuls   | - 238 |
| 3. Where abandoning their former residence, and returning to their native country | - 238 |
| 4. Having partners in houses of trade with various domiciles                      | - 239 |
| 5. From occupation in the enemy's trade   | - 240 |
| 6. From the transfer by the enemy of their trading privileges to them             | - 240 |
| 7. Being mariners   | - 240 |
| 8. Other cases  | - 241 |

|  |       |
|--|-------|
| III. Of the National Character that will be imputed to Vessels | - 242 |
| 1. Generally   | - 242 |
| 2. Purchased by neutrals of enemies                            | - 242 |
| 3. Navigating under enemy's flag and pass                      | - 243 |
| 4. Navigating in the enemy's trade                             | - 243 |
| 5. Of the change of—in transitu                                | - 244 |
| 6. Other cases   | - 244 |

See NAVIGATION LAWS.

|  |       |
|--|-------|
| IV. Of the National Character that will be imputed to other Property             | - 245 |
| 1. Generally   | - 245 |
| 2. As dependent on the question of ownership                                     | - 245 |
| (a) Generally  | - 245 |
| (b) Of the change of—in transitu   | - 246 |
| 3. As affected by the national character of the ship                             | - 246 |
| 4. As dependent on the national character of the soil of which it is the produce | - 247 |
| 5. Under illegal contracts   | - 247 |
| 6. Other cases   | - 247 |

## NAVIGATION LAWS - 248

|   |       |
|---|-------|
| I. General Considerations as to—                      | - 248 |
| II. Of the Construction of—                           | - 249 |
| III. As to British Ships—                             | - 250 |
| 1. What ships are to be considered as—                | - 250 |
| 2. Who may be owners of—                              | - 250 |
| 3. Of the registry of—                                | - 251 |
| (a) Of the transfer of—                               | - 251 |
| (b) De novo   | - 253 |
| 4. Of the title to—                                   | - 253 |
| 5. Of the requisites to entitle to the privileges of— | - 254 |
| 6. Of the rights and privileges of—                   | - 254 |
| (a) Generally   | - 254 |

|   |       |  |       |
|---|-------|--|-------|
|   | Page  |  | Page  |
| (b) <i>Where forfeited — et contra</i>                            | - 254 | VI. Miscellaneous  | - 266 |
| 7. <i>Of the manning of —</i>                                     | - 254 | See ALIENS, BLOCKADE, CAPTEL, CLAIMANTS, CONTRABAND, FOREIGNERS, LICENCES, MASTERS, NATIONAL CHARACTER, PRIZE, RECAPTURE, RESTITUTION, SALVAGE (military), TITLE, TRADE WITH THE ENEMY, VISITATION AND SEARCH. |       |
| (a) <i>Breaches of — et contra</i>                                | - 255 |  |       |
| IV. As to the British Possessions abroad                          | - 255 |  |       |
| 1. <i>Generally</i>   | - 255 |  |       |
| 2. <i>Breaches of — et contra</i>                                 | - 256 |  |       |
| V. As to Foreign Ships  | - 257 |  |       |
| VI. Of the Jurisdiction of Courts as to —                         | - 257 | ORDERS IN COUNCIL  | - 266 |
| 1. <i>Generally</i>   | - 257 |  |       |
| 2. <i>Of Vice-Admiralty Courts</i>                                | - 257 | OWNERS   | - 267 |
| VII. Who and what within the Operation of — et contra             | - 258 |  |       |
| 1. <i>The Crown and Crown property</i>                            | - 258 | I. Of Owners generally   | - 268 |
| 2. <i>Prize property</i>  | - 258 | 1. <i>Of assignees of — see ASSIGNEES.</i>   |       |
| 3. <i>Other property</i>  | - 258 | 2. <i>Who may be — see NAVIGATION LAWS.</i>  |       |
| VIII. What will amount to a Breach of — et contra                 | - 258 | 3. <i>Of the registry of — see NAVIGATION LAWS.</i>  |       |
| 1. <i>What will constitute an exportation — et contra</i>         | - 258 | 4. <i>Of the title of — see AMELIORATIONS, NAVIGATION LAWS, POSSESSION, SHIP'S REGISTER, TITLE.</i>  |       |
| 2. <i>What will constitute an importation — et contra</i>         | - 258 | 5. <i>Of the rights of —</i>   |       |
| IX. Of the Penalties of —   | - 259 | (a) <i>In cases of bottomry — see BOTTOMRY.</i>  |       |
| 1. <i>What circumstances will exempt from — et contra</i>         | - 259 | (b) <i>In cases of damage — see DAMAGE.</i>  |       |
| 2. <i>Forfeitures, how affecting —</i>                            | - 260 | (c) <i>To demurrage — see DEMURRAGE.</i>   |       |
| 3. <i>How affecting the ship and remainder of cargo</i>           | - 260 | (d) <i>In cases of derelict — see DERELICT.</i>  |       |
| X. Of the Onus Probandi in Causes of —                            | - 260 | (e) <i>For freight — see FREIGHT.</i>  |       |
| XI. Of the Priority of Forfeitures                                | - 261 | (f) <i>In matters of prize — see COSTS AND DAMAGES, PRIZE, RANSOM, RECAPTURE, RESTITUTION, SALVAGE (military), TRADE WITH THE ENEMY.</i>   |       |
| XII. Of Seizures for Breaches of —                                | - 261 | (g) <i>In cases of salvage — see SALVAGE (civil).</i>  |       |
| XIII. Miscellaneous   | - 261 | (h) <i>To wreck — see WRECK.</i>   |       |
| See MORTGAGES, SHIP'S REGISTER, TITLE.                            |       |  |       |
|   |       | II. Of Part-Owners   | - 268 |
| NAVY BOARD  | - 261 | 1. <i>Generally</i>  | - 268 |
|   |       | 2. <i>Of the right of the moiety or minority to require bail for the safe return of the ship from a voyage of which they disapprove</i>  | - 269 |
| NEUTRALS  | - 262 | (a) <i>Of the Jurisdiction of the High Courts of Admiralty and Chancery thereon</i>  | - 269 |
| I. Of the Rights of —   | - 262 |  |       |
| 1. <i>Generally</i>   | - 262 | III. Of the Responsibility of —  | - 270 |
| 2. <i>As to the measure of restitution of their property</i>      | - 263 | 1. <i>Generally</i>  | - 270 |
| II. Of the Duties of —  | - 263 | 2. <i>For the acts of their employees</i>  | - 271 |
| III. What States entitled to the Privilege of — et contra         | - 264 | (a) <i>Generally</i>   | - 271 |
| IV. Of the Rights of Neutral Territory, and the Violation thereof | - 264 | (b) <i>The master</i>  | - 271 |
| 1. <i>Generally</i>   | - 264 | (c) <i>The supercargo</i>  | - 271 |
| 2. <i>Of the limits of —</i>                                      | - 264 | (d) <i>The pilot</i>   | - 271 |
| 3. <i>Who may assert —</i>  | - 265 | (e) <i>The crew</i>  | - 272 |
| V. Of official Declarations of Neutral States                     | - 266 | (f) <i>Other parties</i>   | - 272 |



|   | Page |  | Page |
|---|------|--|------|
| 3. <i>Where the vessel is under charter party</i> - - -   | 272  | (h) <i>In the case of a steam tug acting under the orders of the pilot of the vessel in tow which did the damage</i> - - - | 281  |
| 4. <i>In cases of bottomry</i> — see <b>BOTTOMRY</b> .  |      | (i) <i>Of the mode of pleading and raising such exemption</i> — see <b>PRACTICE</b> , cap. viii.                           |      |
| 5. <i>In prize matters</i> — see <b>CAPTORS</b> .   |      | 4. <i>Under local Pilot Acts, and the construction thereof</i> - - -   | 281  |
| 6. <i>For repairs, supplies, or necessities furnished to their ships</i> — see <b>MATERIAL MEN</b> .                              |      |  |      |
| 7. <i>When engaged in the slave trade</i> — see <b>SLAVE TRADE</b> .  |      |  |      |
| 8. <i>For mariners' wages</i> — see <b>WAGES</b> .  |      |  |      |
| IV. <i>Of the conjoint Liability of the Ship and the Owners</i> - - -   | 272  | <b>PAUPERS</b> - - -   | 281  |
| V. <i>Of the Limitation to the Value of Ship and Freight of the Owner's Responsibility for Losses or Damage</i> 273               |      |  |      |
| 1. <i>Under 7 Geo. 2. c. 15. and 26 Geo. 3. c. 86., and the construction thereof</i> - 273  |      | <b>PILOTS</b> - - -  | 282  |
| 2. <i>Under 53 Geo. 3. c. 159., and the construction thereof</i> - - -  | 273  |  |      |
| (a) <i>Generally</i> - - -  | 273  | I. <i>Of the Jurisdiction of Courts as to</i> - - -  | 283  |
| (b) <i>As to the value of the ship and the calculation of the freight</i> - 274   |      | 1. <i>Of the High Court of Admiralty</i> - - -   | 283  |
| (c) <i>As to the liability of the master being also part owner</i> - - -  | 275  | 2. <i>Of other tribunals</i> - - -   | 283  |
| (d) <i>As to foreign owners</i> - - -   | 275  | II. <i>Of the Employment of</i> - - -  | 283  |
| (e) <i>As to the Jurisdiction of the Court of Admiralty thereunder</i> 275  |      | III. <i>Of the Master's Control over</i> — - -   | 284  |
| (f) <i>As to costs</i> - - -  | 276  | IV. <i>Of the Remuneration of</i> — - -  | 284  |
| 3. <i>Extension of the foregoing statutes to Ireland</i> - - -  | 276  | V. <i>Of the Responsibilities of</i> — - -   | 285  |
| 4. <i>Under 6 Geo. 4. c. 125.</i> - - -   | 276  | VI. <i>Miscellanea</i> - - -   | 286  |
| VI. <i>Of the Exemption from Responsibility for Losses or Damage where the Ship was in charge of a duly licensed Pilot</i> - - -  | 276  | <i>Of the exemption of owners from responsibility for damage committed by</i> — see <b>OWNERS</b> .                        |      |
| 1. <i>On general principles</i> - - -   | 276  |  |      |
| 2. <i>Under the old Pilot Act, and the construction thereof</i> - - -   | 277  | <b>PIRATES</b> - - -   | 286  |
| 3. <i>Under 6 Geo. 4. c. 125., and the construction thereof</i> - - -   | 277  |  |      |
| (a) <i>Generally</i> - - -  | 277  | I. <i>Of the Resistance to be made to</i> — - -  | 286  |
| (b) <i>As to foreign vessels</i> - - -  | 278  | II. <i>Of Recaptors from</i> — - -   | 287  |
| (c) <i>Where the pilot was in the permanent employ of the owners of the damaging vessel</i> - - -                                 | 279  | III. <i>Bona Piratarum</i> - - -   | 288  |
| (d) <i>Of the duties of the master and crew in order to found such exemption</i> - - -  | 279  | 1. <i>Of the Jurisdiction of the High Court of Admiralty as to</i> — - -   | 288  |
| (e) <i>Of the duties in the management of the vessel within the province of the pilot</i> - - -                                   | 280  | 2. <i>Of the right to</i> — - -  | 288  |
| (f) <i>Where the damage was occasioned by the joint misconduct of the master and crew and of the pilot</i> - - -                  | 280  | (a) <i>Of former owners</i> - - -  | 288  |
| (g) <i>Where the damage was occasioned by an accident for which neither the pilot nor the master and crew were to blame</i> - 281 |      | (b) <i>Of the Lord High Admiral</i> - - -  | 288  |
|   |      | IV. <i>Bounties on the Capture of Pirates or Piratical Vessels</i> - - -   | 289  |
|   |      | 1. <i>Under 6 Geo. 4. c. 49., and the construction thereof</i> - - -   | 289  |
|   |      | 2. <i>Where held due — et contra</i> - - -   | 289  |
|   |      | 3. <i>Of the payment and distribution of</i> — - -   | 290  |
|   |      | 4. <i>As to the percentage to Greenwich Hospital on</i> — see <b>GREENWICH HOSPITAL</b> .                                  |      |
|   |      | V. <i>Miscellanea</i> - - -  | 290  |
|   |      |  |      |
|   |      | <b>PLEADINGS</b> - - -   | 291  |
|   |      |  |      |
|   |      | I. <i>General Rules and Principles as to</i> — - -   | 291  |

|   |   |      |     |   |       |
|---|---|------|-----|---|-------|
|   |   | Page |     |   | Page  |
| II. Of responsive Pleas   | - | -    | 291 | III. As to Process  | - 301 |
| III. Of Pleadings after Publication of the Evidence in the Cause      | - | -    | 292 | IV. As to Defaults and Primum Decretum  | - 301 |
| 1. Generally  | - | -    | 292 | V. As to Bail   | - 302 |
| 2. Documents and facts noviter perventa                               | - | -    | 293 | VI. As to Appearance  | - 302 |
| IV. Of Pleadings on Appeal  | - | -    | 293 | VII. As to Proxies  | - 302 |
| What Matters are pleadable — et contra                                | - | -    | 293 | VIII. As to Objections to the Jurisdiction of the Court                           | - 302 |
| VI. Documentary Evidence, how to be pleaded                           | - | -    | 294 | IX. As to releasing Ships from Arrest   | - 303 |
| VII. Of Objections to —   | - | -    | 294 | X. As to enforcing the Production of Papers                                       | 303   |
| 1. In proceedings by act on petition                                  | - | -    | 294 | XI. As to Pleadings   | - 303 |
| VIII. In Causes of Bottomry — see BOTTOMRY.                           |   |      |     | XII. As to Assignations   | - 304 |
| IX. In Causes of Possession — see POSSESSION.                         |   |      |     | XIII. As to Affidavits  | - 304 |
| X. Of the Allowance of Costs of Pleas not admitted — see COSTS.       |   |      |     | XIV. As to Terms probatory  | - 304 |
| See AFFIDAVITS, ALLEGATIONS, EVIDENCE, PRACTICE.                      |   |      |     | XV. As to rescinding the Conclusion of the Cause                                  | - 305 |
| —   |   |      |     | XVI. As to postponing Hearing   | - 305 |
| POSSESSION  | - | -    | 295 | XVII. As to Invocation of Proceedings   | - 305 |
| —   |   |      |     | XVIII. As to Abatement of Suit  | - 306 |
| I. General Principles as to Causes of —                               | - | -    | 295 | XIX. As to Alterations of the Decrees of the Court                                | - 306 |
| II. Of the Jurisdiction of the High Court of Admiralty in Causes of — | - | -    | 295 | XX. As to the Institution of a second Suit in respect of the same Cause of Action | - 306 |
| 1. Generally  | - | -    | 295 | XXI. As to Conferences for Compromise   | - 306 |
| 2. Under 3 & 4 Vict. c. 65. s. 4.                                     | - | -    | 295 | XXII. Miscellanea   | - 307 |
| 3. Prior to 3 & 4 Vict. c. 65.  | - | -    | 295 | XXIII. As to Answers — see ANSWERS.   |       |
| 4. Between foreigners   | - | -    | 296 | XXIV. As to Appeals — see APPEALS.  |       |
| III. Of the Jurisdiction of Vice-Admiralty Courts in Causes of —      | - | -    | 296 | XXV. In Causes of BOTTOMRY — see BOTTOMRY.  |       |
| IV. Causes of —   | - | -    | 297 | XXVI. As to Costs — see COSTS.  |       |
| 1. Against master and part-owner                                      | - | -    | 297 | XXVII. In Causes of Damage — see DAMAGE.  |       |
| 2. Against moiety interest  | - | -    | 297 | XXVIII. As to Evidence — see EVIDENCE.  |       |
| 3. Against purchases from the master or agent abroad                  | - | -    | 297 | XXIX. As to Freight — see FREIGHT.  |       |
| 4. Other cases  | - | -    | 298 | XXX. As to Interest — see INTEREST.   |       |
| V. Pleadings in Causes of —   | - | -    | 299 | XXXI. As to Interveners — see INTERVENERS.  |       |
| VI. Bail in Causes of —   | - | -    | 299 | XXXII. As to Limitation of Suits — see LIMITATIONS.                               |       |
| VII. Costs in Causes of —   | - | -    | 299 | XXXIII. As to Paupers — see PAUPERS.  |       |
| VIII. Practice in Causes of —   | - | -    | 299 | XXXIV. In Prize Proceedings — see PRIZE.  |       |
| IX. Attachment to enforce —   | - | -    | 299 | XXXV. In Causes of Salvage — see SALVAGE (civil).                                 |       |
| See TITLE.  |   |      |     | XXXVI. As to Security for Costs — see SECURITY FOR COSTS.                         |       |
| —   |   |      |     | XXXVII. In Slave Seizures — see SLAVE TRADE.                                      |       |
| PRACTICE  | - | -    | 300 |   |       |
| —   |   |      |     |   |       |
| I. General Principles as to —   | - | -    | 300 |   |       |
| II. As to Entry of Actions  | - | -    | 301 |   |       |

|   | Page |
|---|------|
| XXXVIII. As to Tenders—see TENDERS.   |      |
| XXXIX. As to Trinity Masters—see TRINITY MASTERS.                             |      |
| XI. As to Commissions of Appraisement and Sale—see UNLIVERY AND APPRAISEMENT. |      |
| XLI. In Causes of Mariners' Wages—see WAGES.                                  |      |
| XLII. As to Witnesses—see WITNESSES.  |      |
| See ADMIRALTY, CONTEMPT, REGISTRARS, REGISTRAR AND MERCHANTS.                 |      |
| <hr/>   |      |
| PRIVATE ADVENTURE   | 308  |
| <hr/>   |      |
| PRIZE   | 309  |
| <hr/>   |      |
| I. General Considerations as to —   | 310  |
| 1. Proceeds of prize  | 310  |
| 2. Parliamentary and Crown grants in lieu of prize                            | 310  |
| II. Of the Jurisdiction of Courts as to —                                     | 311  |
| 1. Of Courts generally  | 311  |
| 2. Of the Court of Lords Commissioners of Appeal in Prize Causes              | 311  |
| 3. Of the Prize Court of Admiralty  | 312  |
| (a) Generally   | 312  |
| (b) To what extent excluding proceedings at Common Law                        | 313  |
| (c) As to proceedings pending appeal, and after lapse thereof                 | 313  |
| (d) Over booty  | 314  |
| (e) As to Vice-Admiralty Courts   | 314  |
| 4. Of Vice-Admiralty Courts   | 315  |
| 5. Of foreign belligerent Courts of Prize                                     | 315  |
| (a) Generally   | 315  |
| (b) Sitting in neutral countries  | 315  |
| (c) Where the prize was lying in a neutral port                               | 316  |
| 6. Of Courts of Equity—see COURTS.  |      |
| III. What is Prize of War—et contra   | 317  |
| 1. As dependent on the time of capture  | 317  |
| (a) Captures made prior to notification of hostilities                        | 317  |
| (b) Captures made after the conclusion of a treaty of peace                   | 317  |
| 2. As dependent on the question of ownership                                  | 317  |
| (a) Neutral claims to—where pronounced for                                    | 317  |
| (b) Neutral claims to—where pronounced against                                | 317  |
| (c) Unclaimed neutral property, how dealt with                                | 318  |

|   | Page |
|---|------|
| (d) See ALIENS, NATIONAL CHARACTER, NEUTRALS, TITLE.                                    |      |
| 3. As dependent on the trade engaged in   | 318  |
| (a) Generally   | 318  |
| (b) Of the ship, how affecting the cargo  | 319  |
| (c) Fraud as to the ulterior voyage   | 319  |
| (d) Other trading   | 319  |
| See BLOCKADE, CARTEL, CONTINUITY OF VOYAGE, CONTRABAND, LICENCES, TRADE WITH THE ENEMY. |      |
| 4. As dependent on the conduct of the claimants   | 321  |
| (a) Resistance to captors   | 321  |
| (b) Spoliation of papers  | 322  |
| (c) Deviation   | 322  |
| (d) Assumption of disguise  | 322  |
| (e) The covering enemy property   | 322  |
| (f) Cases of conjunction with enemy interests   | 322  |
| (g) Other acts amounting to a violation of neutrality—et contra                         | 323  |
| 5. Cases of British prize ships in the military service of the enemy                    | 323  |
| (a) Cargo on board such ships   | 324  |
| 6. Other cases  | 324  |
| 7. Exemption from condemnation under treaties, where allowed—et contra                  | 325  |
| IV. Of Prize taken in conjunct Expeditions  | 325  |
| V. Of the Right to —  | 325  |
| 1. Of the Crown   | 325  |
| (a) Generally   | 325  |
| (b) To what extent divested by grants to captors  | 328  |
| 2. Of captors   | 329  |
| 3. Of the Lord High Admiral—see DROITS OF ADMIRALTY                                     |      |
| VI. Of the Distribution of —  | 329  |
| 1. Who entitled to share—et contra  | 329  |
| 2. Proportions of individual captors  | 330  |
| 3. Between two or more privateers   | 331  |
| 4. Amongst non-commissioned captors   | 331  |
| See FLAG SHARE, GREENWICH HOSPITAL.   |      |
| VII. Of the Payment of —  | 331  |
| 1. Generally  | 331  |
| 2. In cases of pre-emption of prize cargoes by the Navy Board—see NAVY BOARD.           |      |
| VIII. Of the Assignment of —  | 331  |
| IX. Of the Conversion of —  | 332  |
| X. Of the Liability of Parties in possession of Prize Property                          | 332  |
| XI. Practice in Prize Causes  | 333  |
| 1. Generally  | 333  |

|  | Page |   | Page |
|--|------|---|------|
| 2. <i>In cases of restitution of property of small value</i> - - -   | 333  | III. Of the Responsibility of — - -   | 342  |
| 3. <i>As to invocation of proceedings</i> - - -  | 333  | 1. <i>Generally</i> - - -   | 342  |
| 4. <i>As to the evidence to be taken or received</i> - - -   | 333  | 2. <i>For costs</i> - - -   | 342  |
| 5. <i>As to condemnation of vessels while lying in neutral ports</i> - - -   | 334  | 3. <i>In cases of illegal charges</i> - - -   | 343  |
| 6. <i>Miscellaneous</i> - - -  | 334  | 4. <i>For permitting their names to be used or their profits participated in by other parties</i> - - - | 343  |
| See CAPITULATIONS, CAPTORS, CAPTURE, CLAIMANTS, CARGO, FREIGHT, LETTERS OF MARQUE, RANSOM, RECAPTURE, RESTITUTION, SALVAGE (military). |      | IV. Of the Costs of — - -   | 343  |
|  |      | 1. <i>Generally</i> - - -   | 343  |
|  |      | 2. <i>Between proctor and client</i> - - -  | 343  |
|  |      | V. Of Agreements between — - -  | 344  |
|  |      | See PRACTICE.   |      |
|  |      |   |      |
| PRIZE AGENTS - - -   | 335  | PROHIBITIONS - - -  | 344  |
|  |      |   |      |
| I. Of the Jurisdiction of Courts of Admiralty and Prize over — - -   | 335  | I. General Considerations as to — - -   | 344  |
| II. Of the Appointment of—and the Continuance and Revocation thereof - - -   | 335  | II. What a sufficient Ground for—et contra - - -  | 344  |
| III. Of the Duties of — - -  | 336  | III. Of the Time of Application for — - -   | 345  |
| 1. <i>As to the registration of their letters of attorney, giving bond, &amp;c.</i> - - -  | 336  | 1. <i>Before appearance or plea given</i> - - -   | 345  |
| 2. <i>As to the sale of prizes, the distribution of proceeds, and the transmission of accounts thereon</i> - - -                       | 337  | 2. <i>Before and after sentence</i> - - -   | 346  |
| 3. <i>As to the investment of prize proceeds pending appeal</i> - - -  | 337  | IV. To whom granted—et contra - - -   | 346  |
| 4. <i>In cases of prize taken in conjunct expeditions</i> - - -  | 338  | V. Of the Imposition of Terms on the Grant of— - - -  | 346  |
| 5. <i>In cases of piratical seizures, bounties, &amp;c.</i> - - -  | 338  | VI. Of the Grant of— - - -  |      |
| 6. <i>As to the payment of percentage to Greenwich Hospital by—see GREENWICH HOSPITAL.</i>   |      | 1. <i>In cases of bonds between part-owners for safe return of their ships—see OWNERS.</i>              |      |
| IV. Of the Responsibilities of — - -   | 339  | 2. <i>In cases of title to ships—see POSSESSION, TITLE.</i>   |      |
| 1. <i>Generally</i> - - -  | 339  | 3. <i>In cases of prize—see PRIZE.</i>  |      |
| 2. <i>For proceeds of prize and other seizures</i> - - -   | 339  | 4. <i>In cases of ransom—see RANSOM.</i>  |      |
| 3. <i>For payment of interest on funds in their hands</i> - - -  | 339  | 5. <i>In cases of mariners' wages—see WAGES.</i>  |      |
| 4. <i>In other cases</i> - - -   | 340  | 6. <i>In cases of wreck—see WRECK.</i>  |      |
| V. Of the Remuneration of — - -  | 340  | VII. Of Costs of Proceedings for—see COSTS. See ADMIRALTY.  |      |
| VI. Of Joint Agents - - -  | 341  |   |      |
| VII. Of the Proof of Agency - - -  | 341  |   |      |
| VIII. Miscellaneous - - -  | 341  |   |      |
| IX. Of Agents in Slave Seizures—see SLAVE TRADE.   |      |   |      |
| See AGENTS, REGISTRARS.  |      |   |      |
|  |      |   |      |
| PROCTORS - - -   | 342  | RANSOM - - -  | 347  |
|  |      |   |      |
| I. Of the Admissions of — - -  | 342  | I. What amounts to—et contra - - -  | 347  |
| II. Of the Duties of — - -   | 342  | II. Of the Jurisdiction of the High Court of Admiralty as to— - - -                                     | 347  |
|  |      | III. Of the statutory Regulations thereon and the Construction thereof— - - -                           | 347  |
|  |      | IV. Practice in Cases of — - -  | 348  |
|  |      | See SALVAGE (Military).   |      |
|  |      |   |      |
|  |      | RECAPTORS - - -   | 348  |
|  |      |   |      |
|  |      | I. Who entitled to be considered as—et contra - - -   | 348  |

# INDEX OF TITLES EXTENDED.

xxxv

|  |      |
|--|------|
| II. Of the Rights of —   | Page |
| III. Of the Responsibility of —                                      | 348  |
| See CAPTORS, RECAPTURES, SALVAGE (Military).                         |      |
| RECAPTURE —  | 349  |
| REGISTRARS —   | 350  |
| REGISTRAR AND MERCHANTS  | 351  |
| I. Miscellaneous.  |      |
| II. Of References to —   |      |
| 1. In questions of average — see AVERAGE.                            |      |
| 2. In causes of bottomry — see BOTTOMRY.                             |      |
| 3. In causes of salvage — see SALVAGE.                               |      |
| 4. In causes of wages — see WAGES.                                   |      |
| RESTITUTION —  | 352  |
| ROYAL NAVY —   | 353  |
| SALVAGE (CIVIL) —  | 354  |
| I. Of the Jurisdiction of the High Court of Admiralty in Cases of —  | 355  |
| 1. Generally —   | 355  |
| 2. By statute —  | 356  |
| 3. In personal suits against the owners of property salvaged —       | 356  |
| 4. In suits against British and foreign ships of war —               | 356  |
| 5. As to agents' advances and expenses —                             | 357  |
| 6. As to awards of magistrates and commissioners of salvage —        | 357  |
| See DERELICT.  |      |
| II. Of the Jurisdiction of Magistrates in Cases of —                 | 358  |
| III. Of the Jurisdiction of Commissioners of Salvage in Cases of —   | 358  |
| IV. Of the Jurisdiction as to — within the Cinque Ports —            | 358  |
| V. Of the Parties entitled to be considered as Salvors — et contra — | 359  |
| 1. Generally —   | 359  |
| 2. Parties on board vessels salvaged —                               | 360  |

|   |      |
|---|------|
| (a) The crew —  | Page |
| (b) The passengers —  | 360  |
| 3. Agents —   | 360  |
| 4. Officers and ships in the Government service —   | 361  |
| 5. Other parties —  | 362  |
| VI. What Services amount to — et contra —   | 362  |
| 1. Towage where amounting to — et contra —  | 362  |
| 2. Pilotage where amounting to — et contra —  | 362  |
| 3. Other services —   | 363  |
| VII. Of the Rights, Duties, and Responsibilities of Salvors under the Stat. 9 & 10 Vict. c. 99. — | 363  |
| VIII. Of the Rights of Salvors generally —  | 365  |
| 1. Owners of salvaging vessels —  | 365  |
| 2. Of the relative rights of co-salvors —   | 366  |
| 3. With reference to second salvors —   | 366  |
| 4. To bring derelict vessels into English port for adjudication —                                 | 368  |
| 5. Of the lien of —   | 368  |
| IX. Claims for — where barred — et contra —   | 368  |
| 1. Generally —  | 368  |
| 2. By a custom to render mutual assistance —  | 369  |
| 3. By agreements between the parties prior to the salvage services being rendered —               | 369  |
| 4. By quitting vessels salvaged after completion of their services —                              | 371  |
| 5. By misconduct of salvors —   | 371  |
| 6. By fraud in the salvors' case —  | 372  |
| 7. By lapse of time —   | 372  |
| X. Of the Rights of Owners of Property salvaged as against Salvors —                              | 372  |
| 1. To determine the extent and duration of salvors' services —                                    | 372  |
| 2. To obtain release and delivery to them of property salvaged —                                  | 373  |
| 3. Salvors' claims against, when terminated —   | 373  |
| XI. General Considerations as to the Allotment of —   | 373  |
| XII. Of the Ingredients of Salvage Services —   | 374  |
| 1. Generally —  | 374  |
| 2. Skill and knowledge of salvors —   | 375  |
| 3. Risk and loss of life —  | 375  |
| 4. Value of the property salvaged —   | 375  |
| 5. Ignorance of the locality by vessels salvaged —  | 376  |
| XIII. Awards of — and the Principles of such Remuneration —                                       | 376  |
| 1. With regard to the allotment of a specific proportion of property salvaged —                   | 376  |
| 2. For preservation of life, and how affected thereby —   | 377  |

|  | Page |   | Page |
|--|------|---|------|
| 3. <i>As to distinctions between services to the ship and to the cargo</i> -                     | 377  | XV. Of the Liability to the Payment of —  | 395  |
| 4. <i>In cases of extraordinary merit</i> -  | 377  | 1. <i>Of the East India Company</i> -   | 395  |
| 5. <i>In cases of ordinary merit</i> -   | 378  | 2. <i>Of freight</i> -  | 395  |
| (a) <i>Where the property was of large value</i> -   | 378  | XVI. Of the Payment of —  | 396  |
| (b) <i>Where the property was of moderate value</i> -  | 379  | XVII. Practice in Causes of —   | 397  |
| 6. <i>In cases of trivial merit</i> -  | 379  | 1. <i>Generally</i> -   | 397  |
| 7. <i>In cases of derelict vessels</i> -   | 380  | 2. <i>On appeals from awards of Commissioners and magistrates</i> -   | 397  |
| (a) <i>Proportions of value usually awarded</i> -  | 380  | 3. <i>As to separate actions by the salvors</i> -   | 398  |
| (b) <i>Where more than a moiety was awarded</i> -  | 381  | 4. <i>As to consolidation of actions</i> -  | 398  |
| (c) <i>Where a moiety was awarded</i> -  | 381  | 5. <i>As to the production of protests, and the effect thereof</i> -  | 398  |
| (d) <i>Where less than a moiety was awarded</i> -  | 382  | 6. <i>As to references to the registrar and merchants</i> -   | 398  |
| 8. <i>In cases of derelict goods, tackle, &amp;c.</i> -  | 383  | 7. <i>In estimating the value of the property salvaged</i> -  | 398  |
| 9. <i>Rates of salvage of droits of Admiralty</i> -  | 383  | 8. <i>Miscellanea</i> -   | 399  |
| 10. <i>In cases of salvage to whaling vessels</i> -  | 383  | XVIII. Costs in Causes of —   | 399  |
| 11. <i>In cases of salvage by transshipment</i> -  | 384  | XIX. As to Tenders in Causes of — see TENDERS.  |      |
| 12. <i>Where the services were rendered by officers and ships in the service of Government</i> - | 384  | XX. As to the Percentage to Greenwich Hospital on Salvage Awards to Her Majesty's Ships — see GREENWICH HOSPITAL. |      |
| 13. <i>Where the services were rendered to ships in the service of Government</i> -              | 385  | See SALVAGE (Military), WRECK.  |      |
| 14. <i>Where the services were rendered by foreign ships to British ships</i> -                  | 385  |   |      |
| 15. <i>Where the salvaging ships were steam-vessels</i> -  | 385  | —   |      |
| 16. <i>Where the ships salvaged were steam-vessels</i> -   | 386  | SALVAGE (MILITARY)  | 400  |
| 17. <i>Where the services were rendered by pilots</i> -  | 386  | —   |      |
| 18. <i>On appeals from awards of Commissioners of Cinque Ports</i> -                             | 387  | I. General Considerations as to —   | 400  |
| 19. <i>On appeals from awards of magistrates</i> -   | 388  | II. Of the Jurisdiction of the High Court of Admiralty in Cases of —  | 400  |
| 20. <i>Where previous awards had been made under arbitration</i> -                               | 388  | III. Who may be Salvors — et contra   | 401  |
| 21. <i>Where mutual benefit was rendered and received by the salvors</i> -                       | 389  | IV. What Services will confer a right to — et contra  | 401  |
| 22. <i>How affected by subsequent misconduct of salvors</i> -                                    | 389  | V. Of the Rights of Salvors -   | 402  |
| 23. <i>Other cases</i> -   | 389  | 1. <i>Generally</i> -   | 402  |
| XIV. Of the Apportionment of —   | 389  | 2. <i>Owners of salvaging vessels</i> -   | 402  |
| 1. <i>Of the principles of — with reference to owners of salvaging vessels</i> -                 | 389  | 3. <i>Where barred — et contra</i> -  | 402  |
| 2. <i>Claims of the Admiralty quâ owners</i> -   | 390  | VI. Of Joint Salvors -  | 403  |
| 3. <i>With reference to antecedent agreements for —</i> -  | 390  | VII. Awards of —  | 403  |
| 4. <i>In cases of derelict</i> -   | 391  | 1. <i>Under the general Maritime Law</i> -  | 403  |
| 5. <i>Among officers and crews of coast-guard cruisers and stations</i> -                        | 393  | 2. <i>Under the provisions of the Prize Acts</i> -  | 404  |
| 6. <i>Where the salvaging ships were steam-vessels</i> -   | 393  | (a) <i>What vessels entitled to the higher rate of salvage</i> -  | 404  |
| 7. <i>Shares of apprentices and boys</i> -   | 393  | (b) <i>What vessels entitled to the lower rate of salvage</i> -   | 404  |
| 8. <i>Sundry cases of —</i> -  | 394  | VIII. Of the Apportionment of —   | 404  |
|  |      | IX. Of the Liability of recaptured Property to the Payment of —   | 405  |
|  |      | 1. <i>Of neutral property as subject to condemnation in the Courts of the captor's country — et contra</i> -      | 405  |

|  | Page |
|--|------|
| 2. <i>Of neutral property on board British armed ships</i> - - -   | 406  |
| 3. <i>Of neutral property under treaties with this country</i> - - -   | 406  |
| 4. <i>Of vessels restored to former owners, by reason of their having been purchased under illegal condemnations</i> - | 406  |
| 5. <i>Of property of an allied sovereign</i> -   | 406  |
| 6. <i>Of government property</i> -   | 406  |
| 7. <i>Of other property</i> -  | 406  |
| 8. <i>Where the property was lost from accident pending adjudication</i> -   | 406  |
| 9. <i>Of freight</i> -   | 407  |
| 10. <i>As between owners and charterers</i> -  | 407  |
| X. <i>Practice in Cases of</i> -   | 408  |
| 1. <i>Requisites of proof</i> -  | 408  |
| 2. <i>Value of property saved, how to be estimated</i> -   | 408  |
| See SALVAGE (Mixed).   |      |

SALVAGE (MIXED) - 408

SEA - 409

SECURITY FOR COSTS - 410

|  |     |
|--|-----|
| I. <i>Of the Jurisdiction of the High Court of Admiralty to compel</i> -           | 410 |
| II. <i>Of the Time of Application for</i> -  | 410 |
| III. <i>Of the Affidavits to lead Applications for</i> -                           | 410 |
| IV. <i>Of Payments into Court in lieu of</i> -                                     | 411 |
| V. <i>In respect of Costs already incurred</i> -                                   | 411 |
| VI. <i>In Causes of Bottomry</i> -   | 411 |
| VII. <i>In Causes of Damage</i> -  | 411 |
| VIII. <i>By Foreigners</i> -   | 411 |
| IX. <i>By Mariners</i> -   | 411 |
| X. <i>By reason of Bankruptcy or Insolvency</i> -                                  | 411 |
| XI. <i>By reason of Residence out of the Jurisdiction of the Court</i> -           | 412 |
| XII. <i>By reason of Residence abroad</i> -  | 412 |
| 1. <i>Generally</i> -  | 412 |
| 2. <i>Where about to go abroad</i> -   | 412 |
| 3. <i>In cases of partial and temporary residence in this country and abroad</i> - | 413 |
| 4. <i>In Scotland, Ireland, and Calcutta</i> -                                     | 413 |
| 5. <i>Of public functionaries and officers</i> -                                   | 413 |
| 6. <i>Where action is brought without the knowledge of the plaintiff abroad</i> -  | 414 |
| 7. <i>Where there are co-plaintiffs in England</i> -                               | 414 |

|  |     |
|--|-----|
| XIII. <i>Under other Circumstances</i> -               | 414 |
| XIV. <i>How far available in the Court of Appeal</i> - | 414 |
| XV. <i>Of the Cancellation of</i> -                    | 414 |

SHIPS - 415

|   |     |
|---|-----|
| I. <i>General Considerations as to</i> -  | 415 |
| II. <i>Of the Liability of</i> -  | 415 |
| 1. <i>Generally</i> -   | 415 |
| 2. <i>In cases of collision</i> - see DAMAGE.                                   |     |
| 3. <i>In Mariners' wages</i> - see WAGES.                                       |     |
| III. <i>Proceeds of Sale of</i> - under the Authority of the Court of Admiralty | 416 |
| 1. <i>Of claims against</i> -   | 416 |
| IV. <i>Ship's Papers</i> -  | 417 |
| V. <i>Miscellanea</i> -   | 417 |
| VI. <i>Of the Amelioration of</i> - see AMELIORATION.                           |     |
| VII. <i>Of Average on</i> - see AVERAGE.  |     |
| VIII. <i>Of the Hypothecation of</i> - see BOTTOMRY.                            |     |
| IX. <i>Of the Capture of</i> - see CAPTORS, CAPTURE, PRIZE.                     |     |
| X. <i>Of the Appurtenances of</i> - see OWNERS.                                 |     |
| XI. <i>Of the Possession of</i> - see POSSESSION.                               |     |
| XII. <i>Of the Salvage of</i> - see SALVAGE.                                    |     |
| XIII. <i>Of title to</i> - see TITLE.   |     |
| XIV. <i>Of Wrecks of</i> - see WRECK.   |     |

SHIPS' REGISTERS - 418

|  |     |
|--|-----|
| I. <i>General Considerations as to</i> -                             | 418 |
| II. <i>Of the Effect of</i> - as Evidence of Ownership -             | 418 |
| III. <i>Of the Possession of</i> -                                   | 418 |
| 1. <i>Of the Jurisdiction of the Court of Admiralty to enforce</i> - | 418 |
| 2. <i>Statutory enactments to enforce</i> -                          | 419 |
| 3. <i>Of the parties entitled to</i> - et contra                     | 419 |
| See NAVIGATION LAWS, cap. III. sect. 3.                              |     |

SLAVES - 420

|   |     |
|---|-----|
| I. <i>General Considerations as to</i> -    | 420 |
| II. <i>Of the Custody and Disposal of</i> - | 421 |
| See SLAVE TRADE.                            |     |

|  | Page |  | Page |
|--|------|--|------|
| SLAVE TRADE -  | 422  | 18. <i>Mexico</i> - - -  | 437  |
|  |      | 19. <i>Chili</i> - - -   | 437  |
| I. Of the Penalties and Forfeitures imposed on British Subjects and Property engaged in -                          | 422  | 20. <i>Portugal</i> - - -  | 438  |
| 1. <i>Generally</i> - - -  | 423  | 21. <i>Brazil</i> - - -  | 438  |
| 2. <i>Of the Courts having jurisdiction for the recovery of</i> -  | 424  | VII. Statutory Regulations for the East Indies as to -                   | 439  |
| 3. <i>Of the onus of proof in cases of</i> -   | 424  | VII. Who may be Seizors -  | 439  |
| 4. <i>Of the limitation of actions to enforce</i> -  | 424  | VIII. Of the Rights, Duties, and Responsibilities of Seizors -           | 439  |
| 5. <i>Of exemptions from</i> -   | 424  | 1. <i>Generally</i> - - -  | 439  |
| 6. <i>Of the payment and distribution of</i> -   | 425  | 2. <i>As to costs</i> - - -  | 440  |
| II. Of Bounties on Seizure of Slaves and Slave Ships -   | 425  | 3. <i>As to costs and damages</i> -                                      | 440  |
| III. Of the Liability of Foreigners to the Penalties imposed by Great Britain on such a Traffic -                  | 426  | IX. Of Joint Seizors - - -   | 440  |
| IV. Of the Liability to Condemnation of Foreign Ships and Cargoes engaged in -                                     | 426  | X. Of the Duties and Responsibilities of Agents of Seizors -             | 442  |
| 1. <i>Under the general maritime law and the old statutes</i> - - -  | 426  | XI. Of Appeals in Slave Seizures -                                       | 442  |
| (a) <i>Of the titles of such vessels and the investigation thereof</i> -   | 427  | 1. <i>Generally</i> - - -  | 442  |
| (b) <i>Under colourable transfers between foreigners</i> -   | 427  | 2. <i>Practices in</i> - - -   | 442  |
| (c) <i>Where transferred colourably only to foreigners, but belonging to British subjects</i> -                    | 427  | (a) <i>With reference to inhibitions</i> -                               | 442  |
| (d) <i>Of the onus of proof in such cases</i> - - -  | 428  | (b) <i>Of proceedings in the Court below pending</i> -                   | 443  |
| 3. <i>Of the modern statutory regulations thereon and the construction thereof</i> -                               | 428  | XII. Practice in Suits for Forfeitures -                                 | 443  |
| 4. <i>Of the British Courts of Admiralty having jurisdiction as to</i> -   | 428  | See SLAVES.  |      |
| V. Of the Treaties with Foreign Nations, for the Suppression of - and the Statutes for carrying them into effect - | 429  | STOPPAGE IN TRANSITU -   | 445  |
| 1. <i>Generally</i> - - -  | 429  | STATUTES -   | 446  |
| 2. <i>The Netherlands</i> - - -  | 429  | I. Of the Construction of - - -  | 446  |
| 3. <i>Sweden</i> - - -   | 430  | 1. <i>Generally</i> - - -  | 446  |
| 4. <i>Spain</i> - - -  | 431  | 2. <i>Remedial statutes</i> - - -  | 447  |
| 5. <i>France</i> - - -   | 432  | 3. <i>Statutes in pari materia</i> -                                     | 447  |
| 6. <i>Sardinia</i> - - -   | 433  | II. Miscellaneous - - -  | 448  |
| 7. <i>Denmark</i> - - -  | 433  | TENDERS -  | 448  |
| 8. <i>The Hans Towns</i> - - -   | 433  | I. Of the Effect of - - -  | 448  |
| 9. <i>Tuscany</i> - - -  | 433  | 1. <i>Generally</i> - - -  | 448  |
| 10. <i>The Two Sicilies</i> - - -  | 434  | 2. <i>As to costs</i> - - -  | 448  |
| 11. <i>Hayti</i> - - -   | 434  | II. Miscellaneous - - -  | 449  |
| 12. <i>Venezuela</i> - - -   | 434  | TITLE -  | 450  |
| 13. <i>The Argentine Confederation</i> -   | 434  | I. Of Titles to Ships generally -  | 450  |
| 14. <i>Bolivia</i> - - -   | 435  | II. Of the Jurisdiction of the High Court of Admiralty in Questions of - | 451  |
| 15. <i>Uruguay</i> - - -   | 435  |  |      |
| 16. <i>Texas</i> - - -   | 435  |  |      |
| 17. <i>Austria, Prussia, and Russia</i> -  | 436  |  |      |



|   | Page  |
|---|-------|
| III. Under Sales by the Authority of the High Court of Admiralty  | - 451 |
| IV. Under Sales by the Authority of Foreign Courts of Admiralty   | - 451 |
| V. Under Sales by the Authority of Courts of Vice-Admiralty abroad  | - 452 |
| VI. Under Sales by the Master abroad  | - 452 |
| VII. By Bill of Sale  | - 454 |
| VIII. In Cases of Prize   | - 454 |
| 1. <i>Generally</i>   | - 454 |
| 2. <i>Under purchases by neutrals from the enemy</i>  | - 454 |
| (a) <i>Generally</i>  | - 454 |
| (b) <i>In blockaded ports</i>   | - 455 |
| 3. <i>Under purchases by British subjects from the enemy</i>  | - 455 |
| 4. <i>Under sentences of condemnation of prizes lying in neutral ports—see PRIZE.</i>   |       |
| 5. <i>Rights of former owners where divested—et contra—see POSSESSION, PRIZE, RECAPTURE, RESTITUTION, SALVAGE (Military).</i> |       |
| IX. Where defective—how cured   | - 455 |
| 1. <i>By lapse of time</i>  | - 455 |
| 2. <i>By treaties of peace</i>  | - 455 |
| 3. <i>By other circumstances</i>  | - 455 |
| X. Of the Proof of—   | - 456 |
| XL Of Mortgagees—see MORTGAGEES.  |       |
| XII. In Cases of Wreck—see WRECK.   |       |
| See CHARTER-PARTY, SHIPS.   |       |
| <hr/>   |       |
| TRADE WITH THE ENEMY  | - 456 |
| <hr/>   |       |
| I. General Considerations as to—  | - 456 |
| II. By British Subjects   | - 457 |
| 1. <i>Generally</i>   | - 457 |
| 2. <i>Resident in neutral countries</i>   | - 457 |
| 3. <i>Resident in the enemy's country</i>   | - 457 |
| 4. <i>Parties domiciled in British territory</i>  | - 457 |
| 5. <i>Who may authorize—et contra</i>   | - 457 |
| 6. <i>Exceptions</i>  | - 458 |
| See NATIONAL CHARACTER, cap. II.  |       |
| III. By Neutrals  | - 458 |
| IV. By the Subjects of Allies of this Country   | - 458 |
| V. Colonial Trade   | - 458 |
| 1. <i>Generally</i>   | - 458 |
| 2. <i>Of the relaxations therein allowed by Great Britain</i>   | - 459 |

|  |   |       |
|--|---|-------|
| (a) <i>Generally</i>   | - | - 459 |
| (b) <i>As dependent on the question of the continuity of the voyage</i>              | - | - 460 |
| 3. <i>Of the principles applicable to—as to settlements in the East Indies</i>       | - | - 461 |
| 4. <i>Under extraordinary and privileged contracts with the parent state</i>         | - | - 461 |
| VI. Coasting Trade   | - | - 462 |
| VII. Fishing Trade   | - | - 463 |
| VIII. Other Cases  | - | - 463 |
| IX. Exemptions under Treaties from the Penalties of—                                 | - | - 463 |
| 1. <i>Where allowed—et contra</i>  | - | - 463 |
| X. Practice in Cases of—   | - | - 463 |
| See BLOCKADE, CONTINUITY OF VOYAGE, CONTRABAND, LICENCES, NATIONAL CHARACTER, PRIZE. |   |       |

TREATIES - - 464

|  |   |       |
|--|---|-------|
| I. Of the Construction of—   | - | - 464 |
| 1. <i>Generally</i>  | - | - 464 |
| 2. <i>The treaties for the liquidation of British claims on France</i>   | - | - 464 |
| (a) <i>Of the jurisdiction of Courts as to—see COURTS.</i>   |   |       |
| II. Of the Ratification of—  | - | - 465 |
| III. Of the Effect of—   | - | - 466 |
| IV. Of the Powers of Plenipotentiaries   | - | - 466 |
| V. Of the Parties entitled to claim the Privileges of—et contra  | - | - 466 |
| VI. Of the Privileges conferred by—  | - | - 466 |
| 1. <i>In cases of blockade—see BLOCKADE.</i>   |   |       |
| 2. <i>In cases of contraband—see CONTRABAND.</i>   |   |       |
| 3. <i>In cases of recapture—see RECAPTURE.</i>   |   |       |
| 4. <i>In cases of trade with the enemy—see TRADE WITH THE ENEMY.</i>   |   |       |
| 5. <i>In other cases of prize—see PRIZE.</i>   |   |       |
| VII. Of the Treaties between Great Britain and Foreign Nations for the Suppression of the Slave Trade—see SLAVE TRADE. |   |       |

TRINITY MASTERS - 466

UNLIVERY AND APPRAISEMENT - 467

|  | Page |  | Page |
|--|------|--|------|
| VISITATION AND SEARCH  | 468  | 13. <i>Where the ship is lost, but portions thereof are recovered</i>  | 484  |
| I. Of the Right to —   | 468  | 14. <i>As dependent on the earning of freight</i>                      | 484  |
| II. Of Resistance to —   | 469  | 15. <i>In cases of deficiency of provisions</i>                        | 485  |
| 1. <i>What amounts to — et contra</i>                                  | 469  | 16. <i>By what circumstances barred, — et contra</i>                   | 485  |
| 2. <i>Of the effect of —</i>   | 469  | (a) <i>Statutory regulations thereon</i>                               | 485  |
|  |      | (b) <i>Stipulations prior to such statute</i>                          | 485  |
|  |      | (c) <i>Other circumstances</i>   | 486  |
|  |      | 17. <i>Cases of set-off</i>  | 487  |
| WAGES  | 470  | VII. Of the Forfeiture of —  | 487  |
| I. General Considerations as to —                                      | 471  | 1. <i>General considerations as to —</i>                               | 487  |
| II. Of the Jurisdiction of Courts generally as to —                    | 471  | 2. <i>What circumstances will amount to condonation of — et contra</i> | 488  |
| III. Of the Jurisdiction of the High Court of Admiralty as to —        | 471  | 3. <i>Mode of computation of —</i>                                     | 488  |
| 1. <i>Generally</i>  | 471  | VIII. What Acts will work a Forfeiture of — et contra                  | 488  |
| 2. <i>With reference to the contract of hiring</i>                     | 472  | 1. <i>Mutinous conduct</i>   | 488  |
| 3. <i>Where earned infra corpus comitatûs</i>                          | 473  | 2. <i>Desertion</i>  | 489  |
| 4. <i>Who may sue there for — et contra</i>                            | 473  | (a) <i>Generally</i>   | 489  |
| (a) <i>Alien enemies</i>   | 473  | (b) <i>Statutory regulations thereon</i>                               | 489  |
| (b) <i>Masters</i>   | 474  | (c) <i>What circumstances will amount to —</i>                         | 489  |
| (c) <i>Statutory regulations thereon, and the construction thereof</i> | 474  | (d) <i>What circumstances will not amount to —</i>                     | 490  |
| (d) <i>By the general law prior to such statute</i>                    | 475  | (e) <i>Of the onus of proof of —</i>                                   | 491  |
| (e) <i>Masters theretofore mates</i>                                   | 475  | 3. <i>Absence without leave</i>  | 492  |
| (f) <i>Mates</i>   | 475  | (a) <i>Generally</i>   | 492  |
| (g) <i>Surgeons</i>  | 475  | (b) <i>After the ship's arrival in port</i>                            | 492  |
| (h) <i>Pilots</i>  | 476  | 4. <i>Disobedience of orders</i>                                       | 493  |
| (i) <i>Other parties</i>   | 476  | 5. <i>Neglect of duty</i>  | 494  |
| IV. Of the Jurisdiction of Magistrates as to —                         | 476  | 6. <i>Embezzlement</i>   | 495  |
| V. Of Foreign Seamen   | 477  | 7. <i>Intoxication</i>   | 495  |
| 1. <i>General considerations as to —</i>                               | 477  | 8. <i>Other acts</i>   | 496  |
| 2. <i>Of the jurisdiction of British Courts as to —</i>                | 477  | 9. <i>Non-resistance to pirates — see PIRATES.</i>                     |      |
| 3. <i>Miscellanea</i>  | 478  | IX. Of the Lien for —  | 496  |
| VI. Of the Right to —  | 478  | 1. <i>Generally</i>  | 496  |
| 1. <i>Generally</i>  | 478  | 2. <i>Of the precedence of —</i>                                       | 496  |
| 2. <i>Gradation of wages</i>   | 478  | 3. <i>On the ship</i>  | 497  |
| 3. <i>Under agreements for extra services and remuneration</i>         | 479  | (a) <i>After sale</i>  | 497  |
| 4. <i>During illness</i>   | 480  | 4. <i>On post-office packets</i>                                       | 498  |
| 5. <i>In cases of impressment</i>                                      | 480  | 5. <i>On freight</i>   | 498  |
| 6. <i>In cases of capture and recapture</i>                            | 480  | 6. <i>On cargo</i>   | 498  |
| 7. <i>In cases of detention by foreign powers</i>                      | 481  | X. Of the Liability of Parties for —                                   | 498  |
| 8. <i>Where the voyage is not proceeded with</i>                       | 482  | 1. <i>Generally</i>  | 498  |
| 9. <i>Where earned on illegal voyages</i>                              | 482  | 2. <i>Owners</i>   | 498  |
| 10. <i>Where the ship is disposed of abroad</i>                        | 482  | 3. <i>Masters</i>  | 498  |
| 11. <i>Where wrongfully discharged</i>                                 | 483  | 4. <i>Other parties</i>  | 499  |
| 12. <i>Where the ship is lost</i>                                      | 483  | XI. Of the Calculation of —  | 499  |
|  |      | XII. Of the Assignment of —  | 499  |
|  |      | XIII. Of the Payment of —  | 499  |

|   |   |   |               |
|---|---|---|---------------|
| XIV. Evidence in Causes of—                               | - | - | Page<br>- 501 |
| 1. <i>As to entries in log</i>                            | - | - | - 501         |
| XV. Practice in Suits for—                                | - | - | - 501         |
| 1. <i>Limitation of suits</i>                             | - | - | - 501         |
| 2. <i>As to production of ship's articles</i>             | - | - | - 501         |
| (a) <i>Statutory regulations thereon</i>                  | - | - | - 501         |
| (b) <i>Cases prior to the statute</i>                     | - | - | - 501         |
| 3. <i>As to references to the registrar and merchants</i> | - | - | - 502         |
| 4. <i>Miscellanea</i>                                     | - | - | - 502         |
| XVI. Costs in Causes of—                                  | - | - | - 503         |
| See MARINERS, MARINERS' CONTRACTS.                        |   |   |               |

|     |   |   |     |
|-----|---|---|-----|
| WAR | - | - | 503 |
|-----|---|---|-----|

|           |   |   |     |
|-----------|---|---|-----|
| WITNESSES | - | - | 504 |
|-----------|---|---|-----|

|   |   |   |     |
|---|---|---|-----|
| I. Of the Competency of—  | - | - | 504 |
| 1. <i>Generally</i>   | - | - | 504 |
| 2. <i>Necessary witnesses</i>                                   | - | - | 505 |
| 3. <i>When objections may be taken to—</i>                      | - | - | 506 |
| II. Of the Credibility of—                                      | - | - | 506 |
| 1. <i>Generally</i>   | - | - | 506 |
| 2. <i>Exceptions to—</i>  | - | - | 506 |
| III. Of the Production of—                                      | - | - | 506 |
| 1. <i>Generally</i>   | - | - | 506 |
| 2. <i>Of the allowance of time for—</i>                         | - | - | 507 |
| 3. <i>What witnesses may make affirmations in lieu of oaths</i> | - | - | 507 |
| IV. Of the Examination of—                                      | - | - | 507 |
| 1. <i>Generally</i>   | - | - | 507 |

|  |   |   |               |
|--|---|---|---------------|
| 2. <i>De bene esse</i>   | - | - | Page<br>- 507 |
| 3. <i>On interrogatories</i>   | - | - | - 507         |
| V. Of the Duties of—   | - | - | - 508         |
| 1. <i>To answer questions required of them</i>                       | - | - | 508           |
| 2. <i>To produce papers in their possession relative to the suit</i> | - | - | - 508         |
| VI. Of the Re-examination of—  | - | - | - 509         |
| VII. Miscellanea   | - | - | - 509         |
| VIII. Of the Allowance of Expenses of—                               | - | - | see Costs.    |
| See EVIDENCE.  |   |   |               |

|       |   |   |     |
|-------|---|---|-----|
| WRECK | - | - | 510 |
|-------|---|---|-----|

|  |   |   |     |
|--|---|---|-----|
| I. What is— et contra  | - | - | 510 |
| II. Of the Jurisdiction of the High Court of Admiralty over—               | - | - | 512 |
| III. Of the Seizure and Custody thereof, and the Mode of dealing therewith | - | - | 512 |
| 1. <i>Statutory regulations thereon</i>                                    | - | - | 512 |
| IV. Of the Right to—   | - | - | 514 |
| 1. <i>Of the Crown and its grantees</i>                                    | - | - | 514 |
| (a) <i>Of lords of manors</i>  | - | - | 515 |
| 2. <i>Of the Lord High Admiral</i>   | - | - | 515 |
| 3. <i>Of former owners</i>   | - | - | 515 |
| 4. <i>Of finders of—</i>   | - | - | 516 |
| 5. <i>Of the proof of—</i>   | - | - | 516 |
| V. Of the Responsibility of Parties for Damage to—                         | - | - | 516 |
| VI. Miscellanea  | - | - | 517 |



# TABLE OF CASES.

| A.  |                       | Page  |
|---|-----------------------|---|
| Abby, (Sea,) 1 <i>Mason's</i> (Amer.) <i>Rep.</i> 360.  | 409. n.               | Agincourt, Mahon, (Damage, personal, Wages,) 1 <i>Hagg.</i> 271. 281. 142, 143. 491   |
| Abby, Murchy, (Trade with the Enemy,) 5 <i>C. Rob.</i> 251.                                       | 456                   | Agricola, Grayson, (Damage, Owners,) 2 <i>W. Rob.</i> 10. 19. 137. 277. 280. 281  |
| Abernethy v. Laudale, (Wages,) 2 <i>Dougl.</i> 539.   | 481                   | Aid, Teasdel, (Salvage,) 1 <i>Hagg.</i> 63. 377   |
| Abigail, Hammond, (Droits of Admiralty,) 4 <i>C. Rob.</i> 72.                                     | 147                   | Albion, Best, (Bottomry,) 1 <i>Hagg.</i> 333. 76. 80  |
| Acetree, Lambert v., (Owners,) 1 <i>Ld. Raym.</i> 223.  | 269                   | —, Burrell, (Salvage,) 2 <i>Hagg.</i> 180. n. 362   |
| Acton, Rogers, (Contraband, Licences,) 2 <i>Dodson</i> , 53. 87. 97. 105. 116. 196. 202. 207. 352 | 352                   | —, Turnbull, (Salvage,) 3 <i>Hagg.</i> 254. 256. n. (a). 378. 394   |
| Acton, Mason, (Salvage, military,) <i>Edw.</i> 254.   | 406                   | Albrecht v. Sussman, (Prize Agents,) 2 <i>F. &amp; B.</i> 323. 338  |
| Active, Smith, (Salvage, military,) 3 <i>C. Rob.</i> 224.   | 404                   | Alcock v. Cook, (Wreck,) 2 <i>M. &amp; P.</i> 625., 5 <i>Bing.</i> 340. 516   |
| Actress, Tinker, (Blockade,) 1 <i>Acton</i> , 64.   | 39                    | Aldrich v. Simmons, (Owners,) 1 <i>Stark.</i> 210. 277  |
| Adah, Martin, (Owners, Pilots,) 2 <i>Hagg.</i> 326. 332.  | 271. 285, 286         | Alers v. Tobin, (Cargo,) <i>Abb. Sh.</i> 256. 93. n.  |
| Adam, in re, (Aliens,) 1 <i>Moore</i> , 460.  | 12                    | Alert, Nicholls, (Prize,) 1 <i>Dodson</i> , 236. 330  |
| —, Moor v., (Costs,) 5 <i>M. &amp; S.</i> 156.  | 114                   | Alerta and Cargo v. Blas Moran, (Prize,) 9 <i>Cranck's</i> (Amer.) <i>Rep.</i> 359. 311. n.   |
| Adams v. Colethurst, (Security for Costs,) 2 <i>Anst.</i> 552.                                    | 413                   | Alexander et al., Oliver et al. v., (Mariner's Contracts,) 6 <i>Peters'</i> (Amer.) <i>Rep.</i> 143. 217. n.  |
| —, Tubbs, (Navigation Laws, Pirates,) <i>Edw.</i> 289. 310. 398.                                  | 249. 256. n. 259. 309 | —, Ages, (Blockade,) 4 <i>C. Rob.</i> 93. 47  |
| Addis v. Baker, (Title,) 1 <i>Anst.</i> 222.  | 450                   | —, Crane, (Salvage, military,) 2 <i>Dodson</i> , 37. 406  |
| Adelaide, Bose, (Blockade, Prize,) 3 <i>C. Rob.</i> 284.  | 41. 42. 48. 317       | —, Larsen, (Material Men, Practice,) 1 <i>W. Rob.</i> 288. 293. 297. 356.; 7 <i>Jur.</i> 1067.; 1 <i>Notes of Cases</i> , 185. 380. 228, 229. 303. 447      |
| —, Perenchief, (Navigation Laws, Slave Trade,) 2 <i>Hagg.</i> 230.                                | 258. 423. n.          | —, Tate, (Appearance, Bottomry, Masters, Material Men, Practice,) 1 <i>Dodson</i> , 278. 282. 28. 51. 59. 61. 70. 76. 221. 226. 301                         |
| —, Rose, (Blockade,) 2 <i>C. Rob.</i> 113. n.   | 42. 308               | — v. Wellington, Duke of, (Prize,) 2 <i>Russ. &amp; M.</i> 55. 328. 332   |
| Admiralty, case of, (Admiralty,) 13 <i>Rep.</i> 53., 6 <i>Via. Abr.</i> 522.                      | 7                     | —, Wise, Coulson, (Damage,) 2 <i>W. Rob.</i> 65. 131  |
| Adolph, Schneider, (Bottomry,) 3 <i>Hagg.</i> 249.  | 74                    | Alfred v. Fitzjames, (Slaves,) 3 <i>Esp.</i> 3. 420   |
| Adonis, Gottschalk, (Blockade,) 5 <i>C. Rob.</i> 256.   | 47                    | Aline, Stockebye, (Bottomry, Courts, Damage, Freight, Liens,) 1 <i>W. Rob.</i> 111. 122.; 5 <i>Monthly Law Mag.</i> 302. 53. 75. 126, 127, 128. n. 165. 210 |
| Adriana, Fitzpatrick, (Further Proof, Prize,) 1 <i>C. Rob.</i> 313.                               | 174. 318              | Allegoria, (Freight,) 4 <i>C. Rob.</i> 202. 170   |
| Adrian, Ball v., (Security for Costs,) 1 <i>Tunst.</i> 64.  | 414                   | Allen et al. v. Ship Canada, (Salvage,) <i>Bee's</i> (Amer.) <i>Rep.</i> 90. 389. n.  |
| —, Daleke, (Blockade,) 1 <i>Acton</i> , 64.   | 39                    | — v. McPherson, (Witnesses,) 2 <i>Curtis</i> , 515. 505. n.   |
| Adventure, Brothers, (Droits of Admiralty,) <i>Hay &amp; Marriott</i> , 18.                       | 148                   | —, Parkman v., (Contraband,) 6 <i>C. Rob.</i> 382. 108  |
| —, Class, (Material Men,) 3 <i>C. Rob.</i> 288.   | 227. n.               | — v. Sugrue, (Title,) 8 <i>B. &amp; C.</i> 565. 454   |
| —, Young, (Wages,) 3 <i>Hagg.</i> 153.  | 475. 500              | Alleson v. March, (Wages,) 2 <i>Vent.</i> 181. 476.   |
| Advocate General of Bombay v. Amerchund, (Prize,) 1 <i>Knapp.</i> 329.                            | 120. 325              | Allnutt, Butler v., (Licences,) 1 <i>Stark.</i> 222. 197.   |
| Eolus, Mynne, (Licences,) 1 <i>Dodson</i> , 300.  | 201                   | —, Hagedorn v., (Costs,) 3 <i>Tunst.</i> 379. 114   |
| Aerton v. Ship Aurora, (Mariners, Wages,) <i>Bee's</i> (Amer.) <i>Rep.</i> 161.                   | 215. n. 477. n.       | —, Langhorn v., (Evidence,) 4 <i>Tunst.</i> 511. 153  |
| Africa, Conolly, (Slave Trade,) 2 <i>Acton</i> , 1.   | 427                   | —, Le Cheminant v., (Licences,) 4 <i>Tunst.</i> 367. 203  |

|  | Page                    |  | Page                    |
|--|-------------------------|--|-------------------------|
| Allnutt, Levy v., (Prize,) 15 <i>East</i> , 267.               | 332                     | Anna Maria, Wolgahayer, (Licences,) 1 <i>Dodson</i> ,                | 209.                    |
| —, Pischel v., (Licences,) 4 <i>Taunt.</i> 792.                | 203. 206                | Anne, (Neutrals, Prize,) 3 <i>Wheaton's</i> (Amer.) <i>Rep.</i>      | 425. 435.               |
| —, Siffkin v., (Licences,) 1 <i>M. &amp; S.</i> 39.            | 202. 207                | —, Bicknell, (Salvage, <i>mixed</i> ), 5 <i>C. Rob.</i> 100.         | 408                     |
| Alvarenza & De Pinna, Franco & Franco v., (Un-                 | 467                     | —, Dennison, (Slave Trade,) 2 <i>Acton</i> , 6.                      | 427                     |
| livery and Appraisalment,) 1 <i>Lee</i> , 187.                 | 467                     | — and Jane, Boyce, (Damage, Foreigners,                              |                         |
| Amedie, (Slave Trade, Wages,) 1 <i>Dodson</i> , 84. n. ;       | 427. 497                | Pleadings, Practice,) 2 <i>W. Rob.</i> 100. 104. 106. ¶              | 131. 163. 292. 294. 300 |
| 1 <i>Acton</i> , 240.  | 427. 497                | —, Lord, (Trade with the Enemy,) 3 <i>C. Rob.</i>                    | 91. n.                  |
| Amerchund, Advocate General of Bombay v.,                      | 120. 325                | —, Annemur, Sarrey, (Claimant,) 3 <i>C. Rob.</i> 71.                 | 97                      |
| (Customs and Usages, Prize,) 1 <i>Knapp</i> , 329.             | 120. 325                | Annersley, Rucker v., (Licences,) 5 <i>M. &amp; S.</i> 23.           | 199                     |
| America, Sherborne, (Freight,) 3 <i>C. Rob.</i> 36.            | 170                     | Annett v. Carstairs, (Mortgagees,) 3 <i>Camp.</i> 354.               | 233                     |
| Amesbury v. Smith, (War,) 1 <i>N. R.</i> 299.                  | 503                     | Anon. (Security for Costs,) 2 <i>Anst.</i> 407.                      | 411                     |
| Amiable, Isabella, (Captors, Claimants,) 6 <i>Wheaton's</i>    | 82. n. 97. n.           | — (Owners,) 2 <i>Chan. Cases</i> , 36. ; 6 <i>Fin. Abr.</i>          | 514.                    |
| (Amer.) <i>Rep.</i> 1.   | 82. n. 97. n.           | — (Wages,) 2 <i>Camp.</i> 320. n.                                    | 480                     |
| — Nancy, (Captors,) 1 <i>Paine's</i> (Amer.) <i>Rep.</i>       | 111.                    | — (Costs,) 1 <i>Chitt.</i> 195.                                      | 115                     |
| Amor Parentum, Henn, (Captors, Prize,) 1 <i>C. Rob.</i>        | 303.                    | — (Security for Costs,) 2 <i>Chitt.</i> 152.                         | 413                     |
| Amphitrite, Morgan, (Wages,) 2 <i>Hagg.</i> 403.               | 490                     | — (Ship's Register,) 2 <i>Chitt.</i> 359. ; 3 <i>D. &amp; R.</i>     | 178. n.                 |
| Anderson, Camden v., (Navigation Laws,) 5 <i>T. R.</i>         | 709.                    | — (Costs,) 2 <i>D. &amp; R.</i> 424.                                 | 113                     |
| —, Pirie v., (Trade with the Enemy,) 4                         | 456                     | — (Security for Costs,) 1 <i>Dowl. P. C.</i> 300. ; 2                | C. & J. 88.             |
| <i>Taunt.</i> 652. ; 3 <i>Camp.</i> 240.                       | 456                     | — (Masters, Wages,) <i>Fort.</i> 230.                                | 224. 475                |
| —, Richardson v., (Evidence,) 1 <i>Camp.</i>                   | 65. n.                  | — (Affidavits,) 7 <i>Jur.</i> 182.                                   | 10                      |
| —, Toulman v., (Customs and Usages,                            | 120. 195. 234. 448      | — (Statutes,) <i>Lofft.</i> 388.                                     | 448                     |
| Licences, National Character, Statutes,) 1 <i>Taunt.</i>       | 227.                    | — (Recapture,) <i>Mar.</i> 110. <i>pl.</i> 188. ; 6 <i>Fin. Abr.</i> | 519.                    |
| Anderton, Cambridge v., (Title,) 2 <i>B. &amp; C.</i> 691.     | 453                     | — (Prize,) <i>Mar.</i> 110. ; 15 <i>Fin. Abr.</i> 51.                | 332                     |
| Andrade, Keir v., (Licences,) 6 <i>Taunt.</i> 498. ; 2         | 206                     | — (Wages,) <i>Mod.</i> 93.   | 489                     |
| <i>Marsh.</i> 196.   | 206                     | — (Evidence, Prohibition,) 8 <i>Mod.</i> 194. ; 9                    | Mod. 66.                |
| Andre, (National Character,) 2 <i>Knapp.</i> 365.              | 242                     | — (Capture, Prize,) 12 <i>Mod.</i> 16.                               | 92. 312                 |
| Andrew v. Moorhouse, (Freight,) 5 <i>Taunt.</i> 435. ;         | 165                     | — (Security for Costs,) 3 <i>Moore</i> , 78.                         | 411                     |
| 1 <i>Marsh.</i> 122.   | 165                     | — (Wages,) 2 <i>Show.</i> 86.  | 473. 498                |
| Andrews v. Glover, (Title,) <i>Abb. Sh.</i> 23.                | 452. 453                | — (Wages,) 2 <i>Show.</i> 283. ; <i>Abb. Sh.</i> 625.                | 484                     |
| —, Schnakoneg v., (Licences,) 5 <i>Taunt.</i> 716.             | 198                     | — (Security for Costs,) 2 <i>Taunt.</i> 61. ; 1 <i>Rose</i> ,        | 111.                    |
| Angelique, Streng, (Trade with the Enemy,) 3 <i>C.</i>         | 457                     | — (Security for Costs,) 7 <i>Taunt.</i> 307.                         | 414                     |
| <i>Rob. App. B.</i>  | 74. 169                 | — (Security for Costs,) 8 <i>Taunt.</i> 737.                         | 413                     |
| Angerona, Marks, (Bottomry, Freight,) 1 <i>Dodson</i> ,        | 382.                    | — (Wages,) 1 <i>Vent.</i> 146.                                       | 473                     |
| Anglo Sicilian Captures, (Prize, Joint Capture,                | 326                     | — (Wages,) 1 <i>Vent.</i> 343. ; 2 <i>Chitty's Gen. Prac.</i>        | 521.                    |
| Practice,) 3 <i>Hagg.</i> 192.                                 | 326                     | — (Bottomry,) 4 <i>Fin. Abr.</i> 280.                                | 70                      |
| Ann and Mary, (Affidavits, Damage, Evidence,) 7                | 9. 122.                 | Ansley, Blackett v., (Owners,) 1 <i>Ld. Raym.</i> 235.               | 269                     |
| <i>Jur.</i> 999. ; 2 <i>W. Rob.</i> 189, 190. 196.             | 132. 133. 137. 138. 156 | Anthon v. Fisher, (Ransom,) 3 <i>Dougl.</i> 166. 649. n.             | 347                     |
| — Green and Cargo, (Allegations, National Cha-                 | 16. n. 246. n. 402. n.  | —, (Aliens,) <i>Ex. Chamb.</i> 2. ; <i>Dougl.</i>                    | 650. n.                 |
| acter, Salvage, <i>military</i> .) 1 <i>Gallison's</i> (Amer.) | 269. 289. 292.          | Anthony v. Moline, (Licences,) 5 <i>Taunt.</i> 711.                  | 207                     |
| <i>Rep.</i> 269. 289. 292.                                     | 16. n. 246. n. 402. n.  | — v. Waters, (Licences,) 5 <i>Taunt.</i> 711.                        | 207                     |
| — Jones, (In the Goods of,) (Paupers,) 1 <i>Hagg.</i>          | 181.                    | Apollo, Botcher, (Contraband,) 4 <i>C. Rob.</i> 158.                 | 104                     |
| (Eccl.), 181.  | 282                     | —, Karstadt, (Affidavits, Blockade,) 5 <i>C.</i>                     | Rob. 286.               |
| — Smith (National Character, Trade with the                    | 235. 245. 457           | —, Tennant, (Costs, Owners, Practice,) 1                             | Hagg. 306. 313. 319.    |
| Enemy,) 1 <i>Dodson</i> , 221.                                 | 235. 245. 457           | —, Veal, (Salvage, <i>military</i> ), 3 <i>C. Rob.</i> 308.          | 404                     |
| Anna, Beer, (Prize,) 1 <i>C. Rob.</i> 331.                     | 334                     | Apollon, (Captors,) 9 <i>Wheaton's</i> (Amer.) <i>Rep.</i> 362.      | 88. n.                  |
| — Catharina, Laurel, (Freight,) 6 <i>C. Rob.</i> 10.           | 172                     | Appleby, Att. Gen. v., (Prize,) 3 <i>Anst.</i> 863.                  | 313                     |
| —, Wupper, (National Character,                                | 118.                    |  |                         |
| Trade with the Enemy,) 4 <i>C. Rob.</i> 107. 111.              | 240. 245. 308. 461.     |  |                         |
| — Christiana, (Freight, Further Proof,) <i>Hay &amp;</i>       | 169. 176                |  |                         |
| <i>Marriott</i> , 161.   | 169. 176                |  |                         |
| —, Dorothea, (Trade with the Enemy,) 3 <i>C.</i>               | Rob. 229. n.            |  |                         |
| — La Porte, (Captors, Claimants, Neutrals,                     | 86. 89.                 |  |                         |
| Prize,) 5 <i>C. Rob.</i> 373. 380. 385.                        | 98. 265. 333            |  |                         |
| — Maria, Hildebrandt, (Joint Capture,) 3 <i>C.</i>             | Rob. 211.               |  |                         |

## TABLE OF CASES.

xiv

Appleby v. Dods, (Wages), 8 East, 300. 483. 485  
 Aquila, Lunaden, (Crown, Derelicts, Droits of  
 Admiralty, Salvage,) 1 C. Rob. 37. 42. 46.  
 120. 144. 148. 362. 381. 383  
 Ardincaple, M<sup>r</sup>Leod, (Salvage,) 3 Hagg. 151. 386  
 Argo, Smit, (Further Proof, Prize, Title,) 1 C.  
 Rob. 158. 175. 318. 454  
 Ariadne, (Licences,) 2 Wheaton's (Amer.) Rep.  
 143. 207. n.  
 —, Macleod, (Bottomry,) 1 W. Rob. 412. 419.;  
 6 Jer. 513.; 1 Notes of Cases, 494. 499. 64.  
 69. 80.  
 Armadillo, Benedict, (Bottomry, Pleadings,) 1 W.  
 Rob. 151. 256. 265.; 1 Notes of Cases, 75.  
 53. 70, 71, 72. 292  
 Armitage, Mason v., (Statutes,) 13 Ves. jun. 36. 447  
 Armstrong v. Smith, (Wages,) 1 N. & R. 299.;  
 Abb. Ss. 624. 487  
 Arnold, Robertson v., (Security for Costs,) 1 Tidd's  
 Prac. 580.; 1 Chitt. 267. n. 412  
 Arthur v. Barton, (Masters,) 6 M. & W. 188.; Abb.  
 Ss. 148. 224  
 —, Rathbone, (Blockade, Joint Capture,)  
 1 Dodson, 423. 428. 39. 184. 189, 190  
 —, Rathburn, (Blockade,) Edw. 202. 44  
 Asia, (Contraband,) 6 C. Rob. 44. 110  
 —, Grande, Antonio Joachim (Prize Agents,)  
 Edw. 45. 340  
 Aspinwall v. Queen's Proctor, (Crown, Foreigners,)  
 2 Curteis, 246. 120. 163  
 Atalanta, (Prize,) 3 Wheaton's (Amer.) Rep. 409. 319. n.  
 —, Bray et al. v., (Mariner's Contract,)  
 Bee's (Amer.) Rep. 48. 217. n.  
 —, Klein, (Contraband,) 6 C. Rob. 440. 454. 105  
 Ather, Bellulph v., (Wreck,) 2 Wils. 23. 516  
 Athol, Bellamy, (Damage, Crown Practice, Prize,)  
 1 W. Rob. 374. 381. 118. 138. 301. 333  
 Atkins, Brymer v., (Bail,) 1 H. Black. 164.; 2  
 Tidd's Prac. 983. 36  
 —, Mestaer v., (Liens, Ships, Ship's Register,)  
 5 Traut. 381.; 1 Marsh. 76. 211. 417. n. 419  
 Atkinson v. Atkinson, (Allegations, Witnesses,) 2  
 Add. 468. 484. 18, 19. 508  
 — v. Cotesworth, (Masters,) 3 B. & C. 647.;  
 Smith's Merc. Law, 516. 224  
 — v. Foster, (Witnesses,) 1 Man. Gr. & Sc.  
 713.; 14 Law Journ. N. S. 237. 504  
 —, Grant v., (Practice,) 1 Lee, 161. 306  
 Atlas, (Owners,) 5 Notes of Cases, 54. 279. n. 280. n.  
 —, Clark, (Bottomry,) 2 Hagg. 52. 58. 65.  
 51. 53. 59. 64. 70. 78  
 —, Kimbell, (Contraband, Freight, National  
 Character,) 3 C. Rob. 299. 304. n. 110. 166.  
 169, 170. 247  
 Atwood, Buck v., (Wages,) Stra. 761. 472  
 — v. Munnings, (Agents,) 7 B. & C. 278.; 1  
 1 M. & R. 66. 10  
 Att. Gen. v. Appleby, (Prize,) 3 Aust. 863. 313  
 —, Boyce v., (Material Men,) Abb. Ss. 139.  
 229  
 — v. Case, (Owners,) 3 Price, 302. 277  
 — v. Larragoity, (Navigation Laws,) 2  
 Price, 172. 257. 261  
 — v. Norstedt, (Navigation Laws, Practice,  
 Title,) 3 Price, 97. 109. 431. 261. 301. 451

Page

Att. Gen. v. Wilson, (Navigation Laws,) 3 *Price*  
431. 441. 257. 259

Atty. Bogle v., (Material Men,) *Gow*. 50. 229

Augusta, De Bluhn, (Bottomry,) 1 *Dodson*, 283.  
287. 51. 56. 61. 68. 69.

— or Eugenie, Louvell, (Salvage, Security  
for Costa, Wreck,) 1 *Hagg*. 16. 20. 30. 389.  
396. n. 412. n. 512. 515

Aurora, (Claimant,) 6 *C. Rob*. 3. 97

—, Clark, (Pleadings, Practice,) 1 *W. Rob*.  
322. 292. 304

—, Lindberg, (Licences, National Character,)  
4 *C. Rob*. 218. 246. 200. 245. 246

— (Ship,) Aertson v., (Mariners, Wages,)  
*Bee's* (Amer.) *Rep*. 161. 215. n. 477. n.

—, Thompson, (Possession,) 3 *C. Rob*. 133. 295

Austin v. Dugger, (Costs,) 1 *Add*. 307. 115

—, M'Lean v., (Security for Costs,) 1 *Tidd's*  
*Prac*. 579. 413

Aviso, Da Sylva, (Slave Trade,) 2 *Hagg*. 31. 34.  
37. 40. 426. 440. 441. 442

B.

Babillion, (Head Money,) *Edw*. 39. 179

Baddeley v. Harding, (Security for Costs,) 6 *Madd*.  
214. 414

Badnall v. Haylay, (Security for Costs,) 4 *Mee. &*  
*W*. 535.; 7 *Dowl*. 19.; 1 *Horn & H*. 359.; 2 *Jur*.  
992. 414

Baglehole, Exp., (Licences, National Character,  
Trade with the Enemy,) 18 *Ves*. jun. 528.; 1  
*Rose*, 271. 200. 235. 457

Bagwell (Assignees of) v. Howard, (Stoppage in  
Transit,) 1 *H. Black*. 366. n. 446

—, Stevens v., (Prize,) 15 *Ves*. jun. 139. 332

Bailey v. Bradburn, (Allegations, Witnesses,) 1  
*Hagg*. (Cons.), 99. 18. 506

—, Rex v., (Captors,) *R. R. C. C.* 1. 87

Baird, Russell v., (Masters, Mortgagees,) 1 *D.* 931.  
224. n. 233. n. 212

Baker, Addis v., (Title,) 1 *Anst*. 222. 450

—, Love v., (Courts,) 1 *Ch. Ca*. 67.; *Nelson*,  
105. 117

Baldwin v. Peach, (Limitations,) 1 *Yo. & Coll*. 453. 212

Ball v. Adrian, (Security for Costs,) 1 *Tauxt*. 649. 414

— v. Ball, (Allegations,) 3 *Add*. 9. 17

— & others, Sheffield v., (Appeals, Security for  
Costs,) 2 *Lee*, 291. 27. 414

Ballam, Justin v., (Bottomry,) 1 *Salk*. 34. 109

— Merchant, Smith, (Wages,) *Edw*. 86. 91.  
492. 493. 502

Balston v. Bird, (Licences,) 1 *Knapp*. 121. 205

Baltic, Donaldson, (Contraband,) 1 *Acton*, 25. 109

— Merchant, Smith, (Wages,) *Edw*. 86. 91.  
492. 493. 502

Baltimore, Baker, (Practice, Salvage,) 2 *Dodson*,  
132. 137. 307. 362. 366. 377. 390. 395

Bamfield, Blad v., (Courts,) 3 *Swan*. 605. 670. 117

Bank of England, City of Berne v., (Foreigners,)  
9 *Ves*. 347. 163

Banks, Pattison v., (Statutes,) *Cowp*. 543. 474

|   | Page                  |  | Page                            |
|---|-----------------------|--|---------------------------------|
| Bowcher v. Noidstrom, (Owners,) 1 <i>Taunt.</i> 568.  |                       | British Dominion, (Damage,) 10 <i>Monthly Law Mag.</i> 225.  | 139. n.                         |
|   | 272. 276. 279         | British Empire, (Salvage,) 6 <i>Jur.</i> 608.  | 370                             |
| Bowen v. Fox, (Owners, Possession, Ship's Register,) 5 <i>M. &amp; R.</i> 5.; 10 <i>B. &amp; C.</i> 41.; 4 <i>Car. &amp; P.</i> 452.                                  | 269. 297. 419. 420    | Britten, Camelo v., (Licences,) 4 <i>B. &amp; A.</i> 184.  | 197                             |
| Bowles, Cone v., (Statutes,) 1 <i>Salk.</i> 205.  | 447                   | Broderick, Johnson v., (Wages,) 4 <i>East</i> , 566.; 1 <i>Smith</i> , 153.; <i>Abb. Sh.</i> 643.                              | 481                             |
| —, Orr v., (Security for Costs,) 1 <i>Hodges</i> , 23.  | 414                   | Bromley v. Heseltine, (National Character,) 1 <i>Camp.</i> 75.   | 235                             |
| Boyce v. Attorney-General, (Material Men,) <i>Abb. Sh.</i> 139.   | 229                   | Bronard v. Dumaresque, (Mortgagees,) 3 <i>Moore</i> .  | 231                             |
| Boyd, Tulloch v., (Licences,) 1 <i>Moore</i> , 174.; 7 <i>Taunt.</i> 472.; <i>Holt</i> , 487.   | 203                   | Bronde et al. v. Haven, (Wages,) <i>Gilpin's (Amer.) Rep.</i> 592.   | 497. n.                         |
| Boyle, Thirty Hogsheads of Sugar v., (Law of Nations,) 9 <i>Cranch's (Amer.) Rep.</i> 91.   | 194                   | Brook, Harling v., (Wages,) <i>Comb.</i> 255.  | 473                             |
| Boyon v. Sandforth, (Owners,) <i>Carth.</i> 63.   | 269                   | Brooke, Webb v., (Ransom,) 3 <i>Taunt.</i> 6.  | 347                             |
| Bradburn, Bailey v., (Allegations,) 1 <i>Hagg. (Cons.)</i> 99.  | 18                    | Brooks and others, Keating v., (Allegations, Licences,) <i>Jur.</i> 1845, <i>Perog. (not reported)</i> .                       | 17. n. 18. n. 291. n.           |
| Braddick, Fletcher v., (Damage, Owners,) 2 <i>N. R.</i> 182.  | 138. 272. 277         | Broom, Rex v., (Prohibition,) 12 <i>Mod.</i> 134.  | 345                             |
| Braddyl v. Jehen, (Allegations,) 1 <i>Lee</i> , 568.  | 16                    | Broome v. Ellis, (Witnesses,) 2 <i>Lee</i> , 525.  | 506                             |
| Bragington, Samson v., (Bottomry, Masters,) 1 <i>Ves.</i> 143.; <i>Abb. Sh.</i> 156.  | 64. n. 72. 72. n. 224 | Brothers, Stewart, (Salvage,) 2 <i>Hagg.</i> 195.  | 388. 397                        |
| Brandling, Doe d. Bywater v., (Statutes,) 7 <i>B. &amp; C.</i> 643.; 1 <i>M. &amp; R.</i> 600.  | 447                   | Brotherstone, Harber v., (Bottomry,) 4 <i>Camp.</i> 254.   | 69                              |
| Brandon v. Nesbitt, (Aliens,) 6 <i>T. R.</i> 23.  | 12, 13                | Brotherton v. Hellier, (Interveners,) 1 <i>Lee</i> , 599.  | 182                             |
| Branken Moor, Richards, (Salvage,) 3 <i>Hagg.</i> 373.  | 363. 378              | Brown v. Benn and another, (Appeals, Wages,) 2 <i>Lord Raym.</i> 1248.; 6 <i>Viner's Ab.</i> 523.                              | 23. 472                         |
| Branston, Wilson, (Salvage,) 2 <i>Hagg.</i> 3. n.   | 360                   | — Burn v., (Ship's Register,) 2 <i>Stark.</i> 272.   | 420                             |
| Brant, Miller v., (Wages,) <i>Abb. Sh.</i> 176. 649.; 2 <i>Camp.</i> 590.   | 488                   | — Coates v., (Costs,) 1 <i>Add.</i> 345.   | 113. 115                        |
| Branthwaite, Wiggan v., (Wreck,) 12 <i>Mod.</i> 260.  | 515                   | — v. Franklin, (Prize,) <i>Comb.</i> 474.  | 312                             |
| Bray et al. v. Ship Atalanta, (Allegations,) <i>Bee's (Amer.) Rep.</i> 48.  | 216. n. 482. n.       | — Justice v., (Owners,) <i>Hardres</i> , 673.  | 269                             |
| Brazier, White v., (Costs,) 3 <i>Dowl. P. C.</i> 499.   | 114                   | — King v., (Royal Navy,) 3 <i>Hagg.</i> 97. n.   | 353                             |
| Brazil (Emperor of) v. Robinson, (Security for Costs,) 6 <i>Ad. &amp; E.</i> 801.; 6 <i>Dowl. P. C.</i> 522.; 1 <i>Nev. &amp; P.</i> 817.; <i>W. W. &amp; D.</i> 278. | 413                   | — (Droits of Admiralty,) 12 <i>Mod.</i> 135.; <i>Carth.</i> 399.   | 147                             |
| Bremen Flugge, Meyer, (Captors, Freight, Neutrals,) 4 <i>C. Rob.</i> 90.  | 92. 171. 263          | — v. Lull, (Mariners, Wages,) 2 <i>Summer's (Amer.) Rep.</i> 443.  | 215. n. 481. n. 484. n. 497. n. |
| Brent, Watkin & Bligh v., (Practice,) 1 <i>Curteis</i> , 266.   | 307                   | — v. Millner, (Wages,) 1 <i>Moore</i> , 65.; 7 <i>Taunt.</i> 319.; <i>Abb. Sh.</i> 663.  | 481. 484                        |
| Brett v. Brett, (Statutes,) 3 <i>Add.</i> 210.  | 447                   | — Sills v., (Damage, Evidence,) 9 <i>Car. &amp; P.</i> 601.  | 126. 130. 156. 157              |
| Brewster v. Clarke, (Navigation Laws,) 2 <i>Mer.</i> 75.  | 250. 252              | — v. Thornton, (Evidence,) 1 <i>Nev. &amp; P.</i> 339.; 6 <i>Ad. &amp; E.</i> 185.; <i>W. &amp; D.</i> 11.; 1 <i>Jur.</i> 198. | 154                             |
| Bridges v. King, (Fraud,) 1 <i>Hagg. (Eccl.)</i> 310.   | 163                   | — Wray v., (Security for Costs,) 6 <i>Bing.</i> 271.; 8 <i>Dowl.</i> 279.; 4 <i>Jur.</i> 271.                                  | 412                             |
| Bridgman, Barnard v., (Bottomry,) <i>Hob. Rep.</i> 17.; 6 <i>Vin. Abr.</i> 517.   | 56                    | Browne v. Walker, (Prohibition,) 2 <i>Show.</i> 406.   | 346                             |
| Bridgman's case, (Bottomry,) <i>Hob.</i> 11.; <i>Moore</i> , 918.; 1 <i>Ro. Ab.</i> 530.  | 52. n.                | Brownlow and others v. Garson and others, (Appeals,) 4 <i>Moore</i> , 272.   | 26                              |
| Bridport (Lord,) Nelson (Lord) v., (Evidence,) 10 <i>Jur.</i> 871.  | 151. 156              | Bruce, in re, (National Character,) 2 <i>C. &amp; J.</i> 436.; 2 <i>Tyr.</i> 475.  | 237                             |
| Brig —, Rowe et al. v., (Derelicts,) 1 <i>Mason's (Amer.) Rep.</i> 272. 377.  | 144. n. 380. n.       | — v. Burke, (Practice, Witnesses,) 2 <i>Add.</i> 404.  | 305. 506                        |
| Brig Dodge, Healy, Clarke v., (Salvage,) 4 <i>Washington's (Amer.) Rep.</i> 651.  | 373. n.               | Brucker v. Fromont, (Owners,) 6 <i>T. R.</i> 659.  | 271                             |
| Brig Louis, (Prize Agents,) 5 <i>C. Rob.</i> 146.   | 181. 340              | Brummell v. M'Pherson, (Crown, Prize, Prize Agents,) 5 <i>Russ.</i> 263.   | 120. 320. 341                   |
| Briggs v. Wilkinson, (Freight,) 9 <i>D. R.</i> 871.; 7 <i>B. &amp; C.</i> 30.   | 169                   | Brutton v. Burton, (Navigation Laws,) 1 <i>Chit. Rep.</i> 707.   | 252                             |
| Brilliant, (Derelicts,) <i>Hay &amp; Marrioth</i> , 22.   | 147                   | Brutus, Rutherford, (Contraband,) <i>Note &amp; App. pt. 2.; Add.</i> n. 1.  | 106                             |
| Brisco v. Brisco, (Allegations, Costs,) 1 <i>Hagg.</i> 162.; 3 <i>Phill.</i> 38.  | 18. 115               | Brymer v. Atkins, (Bail,) 1 <i>H. Black.</i> 164.; 2 <i>Tidd's Prac.</i> 983.  | 36                              |
| Bristow v. Towers, (Aliens,) 6 <i>T. R.</i> 35.   | 12                    | Buck v. Atwood, (Wages,) <i>Stra.</i> 761.   | 472                             |
| Britain, Allison, (Salvage,) 1 <i>W. Rob.</i> 40. 45.   | 371. 395. 396. n.     | — v. Rawlinson, (Wages,) 1 <i>Brown.</i> 138.; <i>Abb. Sh.</i> 626.  | 486. 499                        |
| Britannia, Plash, (Salvage, Unlivery and Appraisal,) 3 <i>Hagg.</i> 153.  | 381, 382. 467.        |  |                                 |



## TABLE OF CASES.

xlix

|  | Page               |  | Page              |
|--|--------------------|--|-------------------|
| Buck, Sutton v., (Lords of Manors, Possession, Salvage, Title, Wreck,) 2 <i>Tasat.</i> 302.          | 213.               | Calypso, (Admiralty, Evidence, Salvage, Salvage, mixed,) 2 <i>Hagg.</i> 209. 213. 218.   | 4. 156.           |
|  | 295. 373. 450. 517 |  | 360. 368. 408     |
| Buckley, Somers v., (Joint Capture,) 2 <i>Lev.</i> 182.,   |                    | —, Phalp, (Bottomry,) 3 <i>Hagg.</i> 163.  | 51. 76, 77        |
| pl. 224.; 6 <i>Fin. Abr.</i> 518.  | 185                | —, Schultz, (Blockade,) 2 <i>C. Rob.</i> 298.  | 41. 46. 308       |
| Buena, Ventura, (Marshall,) 6 <i>C. Rob.</i> 157. 174.   | 221                | —, Speck, (Agents, Further Proof, Prize Agents, Trade with the Enemy,) 2 <i>C. Rob.</i> 154.   | 10. 175. 341. 459 |
| Buenos Ayres, (Joint Capture,) 1 <i>Dodson.</i> 28. 34.  | 183. 190           | Cambridge v. Anderton, (Title,) 2 <i>B. &amp; C.</i> 691.  | 453               |
| Baggin v. Bennett, (Admiralty, Bottomry, Prohibition,) 4 <i>Burr.</i> 2035.                          | 6. 53. 346.        | — Barber, (Mariner's Contract, Wages,) 2 <i>Hagg.</i> 243. 247. 252.   | 219. 493          |
| Bulkeley, Hill v., (Evidence,) 1 <i>Phil.</i> 280.   | 156                | Camden v. Anderson, (Navigation Laws,) 5 <i>T. R.</i> 709.   | 250               |
| Boller, Bell v., (Trade with the Enemy,) 1 <i>M. &amp; S.</i> 726.                                   | 457                | — v. Cowley, (Customs and Usages,) 1 <i>W. Black.</i> 417.   | 120               |
| Bulmer, Brown, (Wages,) 1 <i>Hagg.</i> 163. 167.   | 478. 489. 490      | —, Lord v. Home (in error), (Capitulations, Prize, Prohibition,) 6 <i>Bro.</i> 243.; 2 <i>H. Black.</i> 533.; 4 <i>T. R.</i> 382. 397.; 1 <i>H. Black.</i> 475. 553. | 85. 312. 329. 345 |
| Bulsteel, Exp., (Mortgagees,) 2 <i>Cox.</i> 243.   | 231                | Camelo v. Britten, (Licences,) 4 <i>B. &amp; A.</i> 184.   | 197               |
| Bulwer, Dunkley v., (Wages,) 6 <i>Exp.</i> 86.; 2 <i>Camp.</i> 320. n.; 1 <i>Sid.</i> 179.           | 480. 483           | Cameron v. Kyte, (Crown,) 3 <i>Knapp.</i> 332. 342. 346.   | 118, 119          |
| Border, Veley & Joslin v., (Courts,) 1 <i>Carteis.</i> 390.  | 117                | Campbell v. Hall, (Crown,) <i>Lofft.</i> 655.; <i>Cow.</i> 264.  | 119               |
| Burdett, Mincomar v., (Security for Costs,) <i>Cowp.</i> 158.  | 413                | — v. Innes, (Navigation Laws,) 4 <i>B. &amp; A.</i> 426.   | 257               |
| Burgess v. Guild, (Aliens,) 17 <i>F. C.</i> 55.  | 14. n.             | —, Richardson v., (Material Men, Salvage, Wages,) 5 <i>B. &amp; A.</i> 203. n.   | 226. 368. 490     |
| Burgh and others, Powell v., (Practice,) 2 <i>Lee.</i> 507.  | 301                | — v. Stein, (Owners,) 6 <i>Dow.</i> 135.   | 269               |
| Burgoyne v. Free, (Allegations,) 2 <i>Hagg.</i> (Eccl.) 480.   | 17                 | — v. Thompson, (Cargo, Masters,) 1 <i>Stark.</i> 490.  | 93. n. 223        |
| Burke, Bruce v., (Practice, Witnesses,) 2 <i>Add.</i> 404.   | 305. 506           | Campion v. Nicholas, (Wages,) 2 <i>Str.</i> 405.   | 473. 485          |
| Burleigh, Leigh v., (Material Men,) <i>Cow.</i> 122.   | 226                | Canada, (ship,) Allen et al. v., (Salvage,) <i>Bee's</i> (Amer.) <i>Rep.</i> 90.   | 389. n.           |
| Burn v. Brown, (Ship's Register,) 2 <i>Stark.</i> 272.   | 420                | Canadian, Dixon, (Pleadings,) 1 <i>W. Rob.</i> 343.  | 291               |
| Burnard, Wright v., (Evidence,) 2 <i>Exp.</i> 700.   | 152                | Canfield, Howard v., (Witnesses,) 5 <i>Dowl. P. C.</i> 517.  | 509               |
| Burnell v. Jenkins, (Witnesses,) 3 <i>Phill.</i> 394.  | 507                | Cannan and others v. Meaburn, (Owners,) <i>Abb.</i> 54. 400.; 1 <i>Bing.</i> 465.  | 275               |
| Burns v. Stirling, (Damage,) 2 <i>Mar.</i> 96.   | 129. n.            | Canningham v. Fonblanque, (Customs and Usages,) 6 <i>C. &amp; P.</i> 44.   | 121               |
| Buraleim, (Guiana,) Logan v., (Appeals, Slave Trade,) 7 <i>Jur.</i> 1.; 4 <i>Moore.</i> 284. 292.    | 27. n. 443         | Cape of Good Hope, (Joint Capture,) 2 <i>C. Rob.</i> 274. 285.   | 185. 188          |
| — Lopez v., (Slave Trade,) 7 <i>Jur.</i> 1119.; 4 <i>Moore.</i> 300.                                 | 443                | Capture of Chinsurah, (Agents, Prize,) 1 <i>Acton.</i> 179.  | 11. 325           |
| Burton, Brutton v., (Navigation Laws,) 1 <i>Chit. Rep.</i> 707.                                      | 252                | Captures on the Jamaica Station, (Flag Share,) 1 <i>Hagg.</i> 129. 135.  | 158. 159. 160     |
| — Caton v., (Prohibition,) <i>Cowp.</i> 330.   | 346                | Carel and Magdalena, Brandt, (Prize,) 3 <i>C. Rob.</i> 58.; <i>App.</i> 16.  | 312. 315          |
| Bushier Rocher v., (Material Men,) 1 <i>Stark.</i> 27.   | 229                | Carew, Rex v., (Costs, Courts,) 3 <i>Swan.</i> 669.; 1 <i>Vern.</i> 54.  | 117. 193          |
| Busk v. Bell, (Licences,) 16 <i>East.</i> 3.   | 208                | Carey v. White, (Material Men,) 1 <i>Bro. Par. Cases.</i> 284.   | 229               |
| — v. Fearon, (Aliens,) 4 <i>East.</i> 319.; 1 <i>Smith.</i> 103.                                     | 11                 | Carl, Berlin, (Licences,) <i>Edw.</i> 339.   | 202               |
| Butler v. Allnutt, (Licences,) 1 <i>Stark.</i> 222.  | 197. 208           | —, Johann, (Owners,) 3 <i>Hagg.</i> 187.   | 275               |
| Butlin v. Barry, (Appeals, Evidence, Pleadings,) 1 <i>Carteis.</i> 618. n. 631.; 1 <i>Moore.</i> 98. | 23. 151. 294       | — Water, Schmidt, (Continuity of Voyage, Further Proof,) 4 <i>C. Rob.</i> 207. 213.  | 102. 176          |
| Betterworth v. Walker, (Prohibition,) 3 <i>Burr.</i> 1689.   | 344                | Carlotta, Pasqual, (Salvage, military,) 5 <i>C. Rob.</i> 54.   | 405               |
| Buxton v. Snee, (Material Men,) 1 <i>Fezey.</i> 154.   | 226                | Carmichael, Wilkins, (Masters, Material Men,) 1 <i>Dougl.</i> 101.   | 224. 228          |
| Byfield, Forster, (Blockade, Licences,) <i>Edw.</i> 188.   | 46. 48. 49. 303    | Carne, Stokes v., (Masters, Ship's Register,) 2 <i>Camp.</i> 339. 359.   | 223. 418          |
| Bywater v. Brandling (Doe d.), (Statutes,) 7 <i>B. &amp; C.</i> 643.; 1 <i>M. &amp; R.</i> 600.      | 447                | Carolina, (Further Proof, National Character,) 1 <i>C. Rob.</i> 305.   | 176. 245          |
|  |                    | —, (Salvage,) 2 <i>W. Rob.</i> 124.  | 383. 392          |

C.

|   | Page              |  | Page                            |
|---|-------------------|--|---------------------------------|
| Carolina, Hartman, (Further Proof, Trade with the Enemy,) 3 C. Rob. 75.             | 175. 458          | Chamberlain, Clark v., (Salvage,) 2 Mee. & W. 78.  | 368                             |
| —, Nordquist, (Admirals, Captors, Prize,) 4 C. Rob. 256. 260. 266. 462.             | 7. 88. 323        | Chambers and Yatman v. Queen's Proctor, (Evidence,) 2 Curteis, 434.                                  | 157                             |
| —, Verhage, (Cartel, Crown,) 6 C. Rob. 336.   | 94, 95. 118       | Chandler, Dimmock v., (Owners,) Stra. 890.   | 269                             |
| Caroline, Doah, (Contraband, Freight,) 6 C. Rob. 461. 465.                          | 103. 105. 169     | — v. Grieves, (Wages,) 2 H. Black. 606. n.;  |                                 |
| —, (Salvage,) 7 Jur. 660.   | 394, 395          | 6 T. R. 325. n.; Abb. Sh. 442.; Smith's Merc. Law, 397.  | 480                             |
| Carolus, Rogers, (Damage, Responsibility of Owners,) 3 Hagg. 343.                   | 131. 279          | —, Jarvis v., (Courts,) 1 Turn. & Russ. 319.   | 117                             |
| Carron v. Cowan & Co., (Aliens,) 15 F. C. 435. n.                                   | 12. n.            | — v. Meade, (Wages,) 2 Ld. Raym. 1211.   | 480. n.                         |
| Carsau v. Watts, (Prize,) 3 Dougl. 350.   | 330               | Chapman, Bead v., (Wages,) 2 Stra. 937.  | 475                             |
| Carlake v. Mappedoram, (Prohibition,) 2 T. R. 473.                                  | 346               | —, Vlierbloom v., (Freight,) 13 M. & W. 230.   | 166                             |
| Carstairs, Annett v., (Mortgagees,) 3 Camp. 354.                                    | 233               | — v. Whitby and Parson, (Allegations,) 3 Phill. 370. 372.  | 18, 19                          |
| Carter, Clark v., (Witnesses,) 4 Moore, 207. 211.                                   | 505. 509          | Charles Carter, Blaine v., (Bottomry,) 4 Cranck's (Amer.) Rep. 328.                                  | 61. n. 74. n.                   |
| — v. Hall, (Wages,) 2 Stark. 861.; Abb. Sh. 617.                                    | 499               | Charlotta, Duplex, (Tenders, Trade with Enemy,) 1 Dodson, 387. 393.                                  | 448. 451. 458                   |
| Cartwright, Stone v., (Agents,) 6 T. R. 411.  | 10                | Charlotte, (Contraband,) 3 C. Rob. 386.  | 108                             |
| Caruthers, Exp., (Statutes,) 9 East, 44.  | 447               | —, (Prize,) 6 C. Rob. 386. n.  | 324                             |
| — v. Sidebottom, (Owners,) 4 M. & S. 77.  | 277               | —, Avery, (Aliens, Appeals, Captors, Claimant, Crown,) 1 Dodson, 213. 220.                           | 13. 15.                         |
| Cary and Neele, Turner v., (Prize,) 1 Lev. 243.;                                    | 312               | —, 23, 24. 27. 83, 84. 97. 119   |                                 |
| 1 Sid. 367.   | 312               | —, Carline, Ader, (Salvage, military,) 1 Dodson, 192. 200.   | 403. 408                        |
| Case, Att. Gen. v., (Owners,) 3 Price, 302.   | 277               | —, Christine, Petersen, (Blockade,) 6 C. Rob. 101.   | 44                              |
| Casey and Shanahan v. Shaunessy and others, (Evidence,) 4 Notes of Cases, 150.      | 155               | —, Coffin, (Security for Costs,) 4 C. Rob. App. A. 13.   | 410                             |
| Castilia, Stewart, (Mariners, Wages,) 1 Hagg. 59.                                   | 215. 491. 493     | —, Elliot, (Blockade,) Edw. 252.   | 42. 49                          |
| Castle v. Duke, (Mortgagees,) 5 C. P. 359.  | 233               | —, Focks, (Contraband,) 5 C. Rob. 275.   | 107                             |
| Catharina Anna, Helena, (Salvage,) 5 Monthly Law Mag. 43.                           | 390. n. 394. n.   | —, Koltzenberg, (Contraband,) 5 C. Rob. 305.   | 106                             |
| Catharina Elizabeth, Sjobeck, (Captors, Freight, National Character,) 1 Acton, 309. | 90. 171. 246      | —, Nesser, (Salvage,) 2 Hagg. 361.   | 367. 383                        |
| —, Joanna, (Trade with Enemy,) 6 C. Rob. 42. n.                                     | 463               | —, Sophia, Moller, (Blockade, Trade with the Enemy,) 6 C. Rob. 204.; 1 Acton, 56.                    | 38. 45. 463                     |
| —, Maria, Brothering, (Licences,) Edw. 337.   | 205               | —, Stromsten, (Contraband,) 1 Acton, 201.  | 104                             |
| Catherine of Dover, Davison, (Damage, Witnesses,) 2 Hagg. 145. 154.                 | 123. 140. 505. n. | —, Witt, (Droits of Admiralty, Captors,) 5 C. Rob. 280.  | 83, 84. 148                     |
| —, Elizabeth, Le Grange, (Prize,) 5 C. Rob. 232.                                    | 321               | —, Wylie, (Salvage,) 5 Notes of Cases, 4.  | 384. n. 398. n. 399. n. 467. n. |
| Catherine and Anna, Spanger, (Captors,) 4 C. Rob. 39.                               | 91                | Charnock, Green v., (Security for Costs,) 2 Cox, 284.; 3 Bro. C. C. 371.; 1 Ves. jun. 396.           | 412                             |
| Catherwood, James v., (Navigation Laws,) 3 D. & R. 190.                             | 248               | —, Jackson v., (Average,) 8 T. R. 509.   | 32                              |
| Caton v. Burton, (Prohibition,) Cowp. 330.  | 346               | Cheesman, Exp., (Freight, Masters,) 2 Eden, 181.   | 171. 224                        |
| Cayenne, (Greenwich Hospital,) 1 Hagg. 41.  | 177               | —, Robinson v., (Licences,) 1 M. & S. 220.   | 199                             |
| (Cazador), Del Campo and Martinez v., (Slave Trade,) 2 Moore, 15.                   | 423. 426          | Cherry, Clutton v., (Answers,) 2 Phil. 385.  | 20                              |
| —, Sherwill v. The King, (Slave Trade,) 2 Moore, 1.                                 | 424. 442          | Chester, Lawson, (Damage,) 3 Hagg. 316.  | 130, 131                        |
| Cazalet, Newman v., (Bottomry,) 2 Park on Ins. 575. 898.                            | 76. n.            | Chesterfield v. Janssen, (Bottomry,) 2 Ves. 143.; 1 Atk. 341.  | 52                              |
| Cazenove v. Clayton, (Navigation Laws,) 2 Mord. & Rob. 552.                         | 253               | Chevalier v. Finnis, (Security for Costs,) 3 Moore, 602.; 1 B. & B. 277.                             | 412                             |
| Celt, Taylor, (Damage, Witnesses,) 3 Hagg. 321.                                     | 326. 328. n.      | Chichester v. Donegal, (Appeals,) 1 Add. 21. 23.   | 24, 25                          |
| Centurion, Wells, (Allegations, Damage, personal,) 1 Hagg. 162. n.                  | 18. 143           | Chieftain, (Salvage,) 4 Notes of Cases, 459.   | 369. n.                         |
| Ceres, Rackow, (Further Proof,) 3 C. Rob. 79.                                       | 176               | Chiffenden, Evering v., (Security for Costs,) 1 W. & H. 560.; 7 Dowl. 536.; 3 Jur. 288., 9 Sim. 497. | 413                             |
| —, Shew, (Commissioners,) 3 C. Rob. 128.  | 100               | Child, Opy v., (Wages,) 1 Salk. 31.  | 473                             |
| Ceylon, Mulac, (Prize, Recapture,) 1 Dodson, 110. 114.                              | 324. 332. 349     |  |                                 |

## TABLE OF CASES.

li

|   |   |  |              |
|---|---|--|--------------|
| Chinnery v. Blackburne, (Freight,) 1 <i>H. Black.</i>   | 117. n.   | 169  | Page         |
| — v. Blackman, (Freight,) 3 <i>Dougl.</i>   | 391.  | 169  |              |
| Christiana, Larsen, (Damage, Responsibility of Owners, Pilots,) 2 <i>Hagg.</i>                    | 183. 188.   | 129. 278. 286  |              |
| Christian, Demontellano Duke, (Security for Costs,) 5 <i>M. &amp; S.</i>                          | 503.  | 411  |              |
| Christiansberg, Vanderweyde, (Blockade, Contraband,) 6 <i>C. Rob.</i>                             | 376. 382.   | 47. 49. 108. 308   |              |
| Christie v. Craig, (Owners,) 2 <i>Mer.</i>  | 137.; <i>Abb. Sh.</i>                               | 104. 270   |              |
| —, Hussie v., (Bottomry, Masters, Material Men,) 13 <i>Ves. jun.</i>                              | 579. 594. 599.; 9 <i>East.</i>                      | 426.; 3 <i>Swenson.</i> 139.   | 71. 224. 227 |
| — v. Secretan, (Evidence,) 8 <i>T. R.</i>   | 192.  | 152  |              |
| Christina Margaretha, Helgesen, (Blockade,) 6 <i>C. Rob.</i>                                      | 62.   | 46   |              |
| — Maria, Kehnrock, (Contraband,) 4 <i>C. Rob.</i>   | 166.  | 104  |              |
| Christopher, Slyboom, (Prize,) 2 <i>Park on Ins.</i>  | 718.; 2 <i>C. Rob.</i>                              | 209. 315   |              |
| Ciragno v. Hassan, (Security for Costs,) 6 <i>Taxat.</i>  | 20.; 1 <i>Marsh.</i>                                | 421. 413, 414  |              |
| Cidade de Lisboa, Oleivera, (Prize,) 6 <i>C. Rob.</i>   | 358.  | 318  |              |
| Citto, Fehndrick, (National Character,) 3 <i>C. Rob.</i>  | 38.   | 236  |              |
| City of Berne v. Bank of England, (Freight,) 9 <i>Ves.</i>  | 347.  | 163. 169   |              |
| — of Edinburgh, Fraser, (Salvage, Tenders,) 2 <i>Hagg.</i>  | 333. 337.   | 363. 375. 449  |              |
| — of London, Reynolds, (Damage, Wages,) 1 <i>W. Rob.</i>  | 88.; 4 <i>Notes of Cases.</i>                       | 40. n. 132. 133. n. 482  |              |
| Claggett, Wolf v., (Navigation Laws,) 3 <i>Esp.</i>   | 257.  | 260  |              |
| Clark v. Carter, (Witnesses,) 4 <i>Moore.</i>   | 207. 211.   | 505. n. 509  |              |
| — v. Chamberlain, (Salvage,) 2 <i>Mec. &amp; W.</i>   | 78.; 2 <i>Gale.</i>                                 | 217. 368   |              |
| — and Pugh, Price v., (Pleadings,) 3 <i>Hagg.</i>   | ( <i>Ecl.</i> ) 265.                                | 293  |              |
| Clarke, Brewster v., (Navigation Laws,) 2 <i>Mer.</i>   | 75.   | 250. 252   |              |
| — v. Brig Dodge, Healy, (Salvage,) 4 <i>Washington (Amer.) Rep.</i>                               | 651.  | 373. n. 292  |              |
| —, Dew v., (Pleadings,) 2 <i>Add.</i>   | 102.  | 292  |              |
| —, Draper v., (Witnesses,) 1 <i>Car. &amp; K. (N. P.)</i>   | 569.  | 505  |              |
| —, Robertson v., (Title,) 1 <i>Bing.</i>  | 445.  | 453  |              |
| Clarissa, (Freight,) 4 <i>C. Rob.</i>   | 304. n.   | 172  |              |
| Clay v. Snelgrave, (Wages,) 12 <i>Mod.</i>  | 405.; <i>Com.</i>                                   | 74.; 1 <i>Ld. Raym.</i> 576.; 1 <i>Salk.</i> 33.; <i>Carth.</i> 518. | 475          |
| Clayton, Cazenove v., (Navigation Laws,) 2 <i>Mord. &amp; Rob.</i>                                | 552.  | 253  |              |
| Clement, Hoare v., (Material Men,) 2 <i>Show.</i>   | 338.; <i>Abb. Sh.</i>                               | 143. 226   |              |
| — v. Rhodes and others, (Interveners, Pleadings,) 3 <i>Add.</i>                                   | 40.   | 182. 292. 293  |              |
| —, Yrisarri v., (National Character,) 3 <i>Bing.</i>  | 432.; 11 <i>Moore.</i> 308.; 2 <i>Car. &amp; P.</i> | 223. 234   |              |
| Clements, Stort v., (Damage, Owners, Pilots,) <i>Peake.</i>                                       | 107.  | 138. 277. 285  |              |
| Clerk v. Lee, (Admiralty,) 10 <i>Mod.</i>   | 264.  | 7  |              |
| — v. Smeeton, (Claimant,) 2 <i>Stair's Decisions.</i>   | 241.  | 97. n.   |              |
| Cliffe v. Wilkinson, (Security for Costs,) 4 <i>Sim.</i>  | 123.  | 411  |              |
| Clifton, Lightbody, (Appeal, Salvage, Tenders,) 3 <i>Hagg.</i>                                    | 117. 121. 125.                                      | 24. 361. 375. 380. 397. 449  |              |
| Clio, alias William Pitt, Schaken, (Licences, Neutrals,) 6 <i>C. Rob.</i>                         | 67.   | 196. 209. 263  |              |
| Clorinde, Le Garde, (Head Money,) 1 <i>Dodson.</i>  |   | 439. 179. 180  |              |
| Cloutman v. Tunison, (Wages,) 1 <i>Sumner's (Amer.) Rep.</i>                                      | 378.  | 489. n.  |              |
| Clutterbuck v. Coffin, (Wages,) 4 <i>Scott, N. R.</i>   |   | 509. 480   |              |
| Clutton v. Cherry, (Answers,) 2 <i>Phil.</i>  | 385.  | 20   |              |
| Coates v. Brown, (Costs,) 1 <i>Add.</i>   | 345.  | 113. 115   |              |
| —, Herbert v., (Owners,) 3 <i>Stark.</i>  | 112.  | 277  |              |
| Cochrane, Forbes v., (Slaves,) 3 <i>D. &amp; R.</i>   | 679.; 2 <i>B. &amp; C.</i>                          | 448. 421   |              |
| Coe, Rich v., (Material Men,) <i>Cowp.</i>  | 639.; 1 <i>T. R.</i>                                | 108. n. 226  |              |
| Coffin, Clutterbuck v., (Wages,) 4 <i>Scott, N. R.</i>  |   | 509. 480   |              |
| Cognac, Ewen, (Bottomry, Customs and Usages,) 2 <i>Hagg.</i>                                      | 377. 384. 389. 392.                                 | 52. 53. 70. 76. 77. 78. 121  |              |
| Coke v. Cretchett, (Wages,) 3 <i>Lev.</i>   | 60.   | 473  |              |
| Cole v. Parkin, (Navigation Laws,) 12 <i>East.</i>  |   | 471. 252   |              |
| Colebrooke v. Jones, (Consuls, Security for Costs,) 2 <i>Ves.</i>                                 | 154.  | 101. 413   |              |
| Colethurst, Adams v., (Security for Costs,) 2 <i>Ant.</i>   | 552.  | 413  |              |
| Collector and Comptroller of the Customs, London, Rex v., (Navigation Laws,) 1 <i>M. &amp; S.</i> |   | 262. 251. n.   |              |
| Collins, Thompson v., (Wages,) 1 <i>N. R.</i>   | 347.; <i>Abb. Sh.</i>                               | 653. 495   |              |
| Columbia, Thornton, (Salvage, Derelict,) 3 <i>Hagg.</i>   | 428.; 2 <i>Monthly Law Mag.</i>                     | 467. 385. 391  |              |
| —, Weeks, (Blockade, Owners,) 1 <i>C. Rob.</i>  | 156.  | 39. 40. 42. 47. 271  |              |
| Columbine, (Salvage,) 2 <i>W. Rob.</i>  | 186.  | 394. 395   |              |
| —, Norwood, (Damage,) 2 <i>W. Rob.</i>  | 27. 33.   | 132. 135. 137  |              |
| Columbus, Nerroll, (Salvage,) 2 <i>Hagg.</i>  | 178. n.   | 387  |              |
| Comet, Adams, (Prize,) 5 <i>C. Rob.</i>   | 285.  | 316  |              |
| —, Mix, (Blockade,) <i>Edw.</i>   | 32.   | 42. 48   |              |
| Commerce, (Trade with the Enemy,) <i>Hay &amp; Marriott.</i>                                      | 80.   | 463  |              |
| Commissioners for Claims upon France, Daniel v., (National Character,) 2 <i>Knapp.</i>            | 23.   | 241  |              |
| —, Long v., (National Character,) 2 <i>Knapp.</i>   | 51.   | 241  |              |
| Comus, (Salvage,) 2 <i>Dodson.</i>  | 464.  | 357  |              |
| Comyns, Morraugh v., (Prize,) 1 <i>Wils.</i>  | 211.  | 332  |              |
| Conception, Eruzuma, (Practice,) 2 <i>Hagg.</i>   | 175.  | 302  |              |
| Concordia Affinitatis, (Further Proof,) <i>Hay &amp; Marriott.</i>                                | 169. 289. 294.                                      | 173. 174. 176  |              |
| —, Bayzard, (Captors, Claimant,) 2 <i>C. Rob.</i>   | 102.  | 90. 97. 262  |              |
| —, Sophia, (Contraband, Further Proof,) <i>Hay &amp; Marriott.</i>                                | 267.  | 107. 174   |              |
| —, Wise, (Prize, Title,) 1 <i>C. Rob.</i>   | 119.  | 317. 334. 453. 456   |              |
| Cone v. Bowles, (Statutes,) 1 <i>Salk.</i>  | 205.  | 447  |              |
| Conferensrath, Baur, (Trade with the Enemy,) 6 <i>C. Rob.</i>                                     | 362.  | 460  |              |
| Conon, (Security for Costs,) 6 <i>Jur.</i>  | 351.  | 410. 412   |              |
| Conqueror, Tate, (Prize,) 2 <i>C. Rob.</i>  | 303.  | 310. 318   |              |

|  | Page                     |   | Page   |
|--|--------------------------|---|--|
| Constable's, Sir H., case, (Wreck,) 5 <i>Rep.</i> 106.;<br><i>Daw. Rep.</i> 33. 56.  | 512. 514                 | Cotton v. Witt, (Costs,) 4 <i>Tunst.</i> 55.  | 114  |
| Constable's, Sir R., case, (Wreck,) 5 <i>Rep.</i> 106.;<br>2 <i>Inst.</i> 167.   | 511                      | Countess of Conway's case, (National Character,)<br>2 <i>Knaapp.</i> 364.   | 242  |
| Constable and Bailey v. Tuffnell and Mason, (Wit-<br>ness,) 4 <i>Hagg.</i> 507.  | 506                      | — Durham, (Damage,) 9 <i>Monthly Law</i><br><i>Mag.</i> 279.  | 128. n.  |
| Constancia, (Average, Bottomry, Cargo, Practice),<br>10 <i>Jur.</i> 845. 849.; 4 <i>Notes of Cases</i> , 285. 513.<br>518. 677.                                      | 32. 74. 93. n. 307       | — Harcourt, Bunn, (Mariner's Contracts,<br>Wages,) 1 <i>Hagg.</i> 248.  | 218, 219. 494  |
| Constant Mary, (Prize,) 3 <i>C. Rob.</i> 97. n.  | 316                      | — Lauderdale, (Possession,) 4 <i>C. Rob.</i><br>283.  | 298  |
| Constantia, Harlessen, Knudson, (Bottomry, Cap-<br>tors, Claimants, Freight,) <i>Edw.</i> 232.   | 62. n. 87. 97. 171, 172  | Courier Erick, (Blockade,) <i>Edw.</i> 249.   | 48   |
| —, Henrickson, (Statutes,) 6 <i>C. Rob.</i> 321.   | 446                      | Courtial v. Homfray, (Appeals,) 2 <i>Hagg.</i> (Eccl.), 3.  | 27   |
| —, Holbeck, (Contraband,) 6 <i>C. Rob.</i> 461.  | 105                      | Courtney, English, (Wages,) <i>Edw.</i> 239.  | 477  |
| Convenientia, Peterson, (Further Proof, Masters,)<br>4 <i>C. Rob.</i> 201. 205.  | 175. 225                 | Cousens and others, Filewood v., (Paupers,) 1 <i>Add.</i><br>286.   | 282  |
| Cook, Alcock v., (Wreck,) 2 <i>M. &amp; P.</i> 625.; 5 <i>Bing.</i><br>340.  | 516                      | Cousine Marianne, Deboer, (Licences, National<br>Character,) <i>Edw.</i> 346.   | 198. 246   |
| Cooke, Harvey v., (Flag Share,) 6 <i>East</i> , 220.; 2<br><i>Smith</i> , 341.   | 160                      | Covinton v. Roberts, (Average,) 2 <i>New Rep.</i> 378.;<br>2 <i>Marsh on Ins.</i> 547.  | 33   |
| Coomb, Staniforth v., (Licences,) 5 <i>Tunst.</i> 726.   | 206                      | Cowie, Wainhouse v., (Licences,) 4 <i>Tunst.</i> 178.   | 204  |
| Coombs, Hutchinson v., (Mariners, Wages,) 7<br>( <i>Amer.</i> ) <i>Jur.</i> 37.  | 215. n., 216. n. 483. n. | Cowan & Co., Carron v., (Aliens,) 15 <i>F. C.</i> 435. n.   | 12. n.   |
| —, United States v., (Wreck,) 12 <i>Peters</i> ,<br>( <i>Amer.</i> ) <i>Rep.</i> 72.   | 512. n.                  | Cowley, Camden v., (Customs and Usages,) 1 <i>W.</i><br><i>Black.</i> 417.  | 121  |
| Cooper v. Derriennic and others, (Witnesses,) 1<br><i>Hagg.</i> (Eccl.) 482.   | 509                      | Cox v. May, (Salvage, military,) 4 <i>M. &amp; S.</i> 152.  | 407  |
| — v. Green, (Practice,) 2 <i>Add.</i> 454.   | 301                      | Coxe, Cunningham v., (Witnesses,) <i>Prerog.</i> 28th<br><i>June</i> , 1781.  | 506  |
| —, Leuckhart v., (Customs and Usages,) 7<br><i>Car. &amp; P.</i> 119.  | 121                      | Craddock's case, (Material Men,) 2 <i>Brownlow</i> , 37.  | 226  |
| — v. South, (Ship's Register,) 4 <i>Tunst.</i> 802.  | 418                      | Craig, Christie v., (Owners,) 2 <i>Mer.</i> 137.; <i>Abb.</i><br><i>Sh.</i> 104.  | 270  |
| Copenhagen, Menning, (Average, Cargo, Freight,)<br>1 <i>C. Rob.</i> 289. 293.  | 31, 32. 94. 166, 167     | Craigie and Craigie v. Lewin and others, (Na-<br>tional Character,) 3 <i>Carte</i> , 435.   | 237  |
| Copenhagen, Mullens, (Bail, Captors, Cargo, Prize),<br>3 <i>C. Rob.</i> 178.   | 36. 85. 94. 335          | Crawford et al. v. William Penn, (Aliens, Bot-<br>tomry, Cartel, National Character,) <i>Peters'</i><br>( <i>Amer.</i> ) <i>Rep. Circ. C. Rep.</i> 106. 484.; 3 <i>Wheaton</i><br>( <i>Amer.</i> ) <i>Rep.</i> 484. | 12. n. 14. n. 61. n.<br>79. n. 94. n. 95. n. 242. n. |
| Cora, Van Allen, (Trade with the Enemy,) 2 <i>Acton</i> ,<br>44.   | 462                      | Crawford, Lucena v., (Bottomry,) 2 <i>N. R.</i> 269.  | 62   |
| Cordes and Gronemeyer, O'Neale v., (National Cha-<br>racter,) 13 <i>F. C.</i> 221.; <i>Mor. No.</i> 2. <i>Prize</i> .  | 245. n.                  | Creed v. Mallett, (Wages,) <i>Fort.</i> 231.  | 476  |
| Corier Maritimo, Mustahinich, (Captors, Demur-<br>rage,) 1 <i>C. Rob.</i> 287.   | 90. 143                  | Creighton, Henderson, (Salvage, military,) 4 <i>C.</i><br><i>Rob.</i> 272.  | 407  |
| Cormac, Leevin v., (Licences,) 4 <i>Tunst.</i> 483. n.   | 202                      | Crespigny v. Wittenoom, (Statutes,) 4 <i>T. R.</i> 793.   | 447  |
| Cornelia, Roose, (Recapture, Restitution,) 1 <i>Edw.</i><br>244.   | 350. 352                 | Cresswell, Dofter v., (Wages,) 7 <i>D. R.</i> 650.; 2<br><i>Car. &amp; P.</i> 161.  | 479  |
| —, (Licences,) <i>Edw.</i> 360.  | 203                      | Cretehatt, Coke v., (Wages,) 3 <i>Lev.</i> 60.  | 473  |
| Cornelis and Maria, Zortlief, (Prize,) 5 <i>C. Rob.</i> 28.<br>319   |                          | Crickett, Ladbroke v., (Admiralty, Bottomry, Pro-<br>hibition,) 2 <i>T. R.</i> 649. 653. 4. 6. 53. 59. 346  |  |
| Cornelius, Hughes v., (Admiralty, Prize, Title,)<br><i>Carth.</i> 32.; <i>Skin.</i> 59.; 6 <i>Fin. Abr.</i> 519. 534.;<br>2 <i>Show.</i> 232.; <i>Ld. Raym.</i> 473. | 2. 315. 451              | —, M'Manus v., (Owners,) 1 <i>East</i> , 106.   | 271  |
| Corner v. Blackburn, (Aliens,) 2 <i>Doug.</i> 640.   | 12                       | Crockett, Flindt v., (Licences,) 5 <i>Tunst.</i> 674.; 15<br><i>East</i> , 525.   | 196, 197. 199  |
| Corry, Smith v., (Allegations, Costs,) 1 <i>Lee</i> , 432.<br>16. 115  |                          | —, Groning v., (Licences,) 3 <i>Camp.</i> 83.   | 201  |
| Corset v. Hurley, (Bottomry,) <i>Comb.</i> 135.; <i>Rep.</i><br><i>temp. Holt.</i> 48.   | 52. n.                   | Croft v. Croft, (Pleadings,) 3 <i>Hagg.</i> (Eccl.), 317.   | 294  |
| Cosens, Darby v., (Prohibition,) 1 <i>T. R.</i> 552.   | 343                      | Cromwell, Salmon and others v., (Allegations,) 3<br><i>Phill.</i> 220.  | 17. 19   |
| —, Notley v., (Prohibition,) 1 <i>T. R.</i> 552.   | 345                      | Cropper, Oxenden v., (Security for Costs,) 4 <i>Dowl.</i><br>574.   | 411  |
| Cosling, Thulluson v., (Evidence,) 4 <i>Esp.</i> 266.  | 154                      | Crosby, Smith v., (Wages,) <i>Fort.</i> 230.  | 473  |
| Cosmopolite, (Prize,) 3 <i>C. Rob.</i> 333.  | 316                      | Crouch v. Martin, (Wages,) 2 <i>Fern.</i> 595.  | 497  |
| —, Mathieson, (Licences, Possession,) 4<br><i>C. Rob.</i> 8. 13.   | 196. 206, 207. 298       | Crowley, Tullock v., (Security for Costs,) 1 <i>Tunst.</i><br>18.   | 412  |
| Cotesworth, Atkinson, v., (Masters,) 3 <i>B. &amp; C.</i> 647.;<br><i>Smith's Merc. Law</i> , 516.   | 224                      | Cuff, Pratt v., (Wages,) 4 <i>East</i> , 43. n. 481. 481. n.  | 303.   |
|  |                          | Cumberland, (Practice, Salvage,) 9 <i>Jur.</i> 191.   | 376. 387   |
|  |                          | Cunliffe, Waring v., (Interest,) 1 <i>Ves. jun.</i> 99.   | 181  |

## TABLE OF CASES.

liii

|  | Page   |  | Page                   |
|--|--|--|------------------------|
| Cunnington v. Coxe, (Witnesses), <i>Prerog.</i>          | 284  | Dearle v. Southwall, (Practice), 2 <i>Lee</i> ,                  | 93.                    |
| <i>June</i> , 1781.                                      | 506  | Dearlere, Parslow v., (Statutes), 4 <i>East</i> ,                | 438.                   |
| Curling v. Long, (Freight), 1 <i>Bos. &amp; Pill</i>     | 634.   |  | 447                    |
| <i>Abb. Sh.</i>  | 463.   | De Bonneval v. De Bonneval, (National Charac-                    |                        |
| Curtis v. Perry, (Navigation Laws), 6 <i>Ves. jun.</i>   | 739.   | ter), 1 <i>Curtis</i> , 857. 863.                                | 237, 238               |
| Curtis, Taylor v., (Average), 2 <i>Marsh</i> .           | 309.; 6                                      | Deccan, Army of the, (Appeals), 2 <i>Knapp</i> .                 | 103.                   |
| <i>Tawnt</i> . 608.; <i>Holt</i> , 192.; 4 <i>Camp</i> . | 337.; <i>Abb.</i>                            |  | 22                     |
| <i>Sh.</i>   | 480.   | De Cock, (Damage), 3 <i>Monthly Law Mag.</i>                     | 303.                   |
| Cutler v. Powell, (Wages), 6 <i>T. R.</i>                | 320.; <i>Abb. Sh.</i>                        |  | 125. n.                |
|  | 624.   | Deffis v. Parry, (Licences), 3 <i>B. &amp; P.</i>                | 3.                     |
| Cygnat, Kidd, (Prize, Salvage, military), 2 <i>Dod-</i>  | 325. 406                                     | Defiance, (Salvage), 3 <i>Hagg.</i>                              | 256. n. (c.)           |
|  |  | De Grave Galway, Speerman v., (Masters), 2 <i>Vern.</i>          | 643.                   |
|  |  |  | 223                    |
|  |  | — v. Hedges, (Owners), 2 <i>Ld. Raym.</i>                        | 1285.; <i>Abb. Sh.</i> |
|  |  |  | 102.                   |
|  |  | Deguilder v. Depiester, (Bottomry), 1 <i>Vern.</i>               | 263.                   |
| D.   |  |  | 78                     |
| Da Costa v. Newnham, (Average), 2 <i>T. R.</i>           | 407.   | De Jonge Joslers, Reetsma, (Contraband, Prize),                  |                        |
|  |  | <i>Hay &amp; Murriott</i> , 148.                                 | 107. 318               |
| D'Aguilar v. D'Aguilar, (Pleadings), 1 <i>Hagg.</i>      |  | Delamainer v. Winteringham, (Wages), 4 <i>Camp.</i>              |                        |
| ( <i>Eccl.</i> )   | 776.   |  | 186.                   |
| Daffie, Soaring, (Cartel), 3 <i>C. Rob.</i>              | 141.   | Del Campo and Martinez v. Queen (Cazador),                       |                        |
| Daines, King's Proctor v., (Evidence), 3 <i>Hagg.</i>    |  | (Slave Trade), 2 <i>Moore</i> , 15. 45.                          | 423. 426               |
| ( <i>Eccl.</i> )   | 235.   | Demanroffe v. Jackson, (Security for Costs), 13                  |                        |
| Dale, Westerdeal v., (Material Men), 7 <i>T. R.</i>      | 312.   | <i>Price</i> , 603.  | 412                    |
|  | 226  | De Mello, De Metton v., (Prize), 12 <i>East</i> , 234.;          |                        |
| Dalgeish v. Hodgson, (Blockade, Evidence), 5 <i>M.</i>   |  | 2 <i>Camp</i> .  | 240.                   |
| & <i>P.</i>  | 407.; 7 <i>Bing</i> .                        | Demerara and its Dependencies, (Slaves), 1 <i>Dod-</i>           |                        |
| Dalhousie v. M'Donnall, (National Character), 7          |  | <i>son</i> , 263.  | 420                    |
| <i>Clark &amp; Fin.</i>                                  | 817.   | De Metton v. De Mello, (Prize), 12 <i>East</i> , 234.;           |                        |
| Dallas, Doyle v., (Title), 1 <i>M. &amp; R.</i>          | 48.  | 2 <i>Camp</i> .  | 240.                   |
| Dalrymple v. Dalrymple, (Answers), 2 <i>Hagg.</i>        |  |  | 313                    |
| ( <i>Cons.</i> )   | 127.   | Demontellano (Duke) v. Christian, (Security for                  |                        |
| Dalton, Wilkinson v., (Witnesses), 1 <i>Add.</i>         | 339.   | Costs), 5 <i>M. &amp; S.</i>                                     | 503.                   |
|  | 509  | Denew v. Stock, (Courts), 3 <i>Swan</i> .                        | 662.                   |
| Dame Catherine, De Workeen, (Captors, Prize),            |  | Denner, Look v., (Allegations), 1 <i>Add.</i>                    | 360.                   |
| <i>Hay &amp; Marriott</i> , 244.                         | 86. 393                                      | Depalock v. Blackburn, (Masters), 3 <i>Camp.</i>                 | 63.                    |
| Danchebar African, Smit, (National Character,            |  |  | 222                    |
| Prize), 1 <i>C. Rob.</i>                                 | 107. 112.                                    | Depiester, Deguilder v., (Bottomry), 1 <i>Vern.</i>              | 263.                   |
| Dandy v. Turner, (Bottomry), <i>Eq. Cas. Ab.</i>         | 372.;  |  | 78                     |
| 2 <i>Park on Ins.</i>                                    | 887.   | Der Mohr, Helmer, (Captors, Freight), 3 <i>C. Rob.</i>           |                        |
| Daniel v. Commissioners for Claims upon France,          |  | 129.; 4 <i>C. Rob.</i>   | 314.                   |
| (National Character), 2 <i>Knapp</i> .                   | 23.  | Derriennic and others, Cooper v., (Witnesses),                   |                        |
| Dankbaarheid, Forbeck, (Licence), 1 <i>Dodson</i> ,      | 183.   | 1 <i>Hagg. (Eccl.)</i>   | 482.                   |
|  | 196. 200. 205                                | Desborough v. Rawlins, (Evidence), 3 <i>Mylne &amp; Cr.</i>      |                        |
| Danous, (National Character), 4 <i>C. Rob.</i>           | 255.   |  | 515. 519.              |
|  | 235  | Desiree, Deplaney, (Flag Share), 4 <i>C. Rob.</i>                | 422.                   |
| Dante, (Bottomry), 4 <i>Notes of Cases</i> ,             | 408.   |  | 160                    |
| Dantzic Packet, Tanner, (Salvage), 3 <i>Hagg.</i>        | 383.   | Despard, Wilkins v., (Navigation Laws), 5 <i>T. R.</i>           |                        |
|  | 367. 372. 389                                |  | 112.                   |
| Darby v. Cosens, (Prohibition), 1 <i>T. R.</i>           | 552.   | Despatch, (Salvage), 4 <i>Monthly Law Mag.</i>                   | 87.                    |
| —, Reid v., (Title), 10 <i>East</i> ,                    | 143.   |  | 388. n.                |
| Darell & Budd, Moore v., (National Character), 4         |  | De Tastet, Lopes v., (Costs), 7 <i>Moore</i> , 120.; 3 <i>B.</i> |                        |
| <i>Hagg. (Eccl.)</i>                                     | 352.   | & <i>B.</i>  | 292.                   |
| Darling (Eliza), Heathorn v., (Bottomry), 1 <i>E. F.</i> |  |  | 113, 114               |
| <i>Moore</i> , 5.  | 36. 58. 70                                   | — v. Taylor, (Aliens), 4 <i>Tawnt</i> .                          | 233.                   |
| Dash and others, (Capitulations), <i>Edw.</i>            | 271.   | — Webster v., (Wages), 7 <i>T. R.</i>                            | 157.; 1                |
| Daubuz v. Morabead, (Aliens), 6 <i>Tawnt</i> .           | 332.   | <i>Park on Ins.</i>  | 11.                    |
| David, Luckie, (Practice, Salvage), 9 <i>Monthly Law</i> |  | De Tastet's case, (Treaties), 2 <i>Knapp</i> .                   | 358.                   |
| <i>Mag.</i>  | 209. 303. n. 358. n. 387. n. 397. n. 399. n. | De Vaux v. Salvador, (Damage), 4 <i>Ad. &amp; E.</i>             | 431.;                  |
| Davies, Rind v., (Paupers), 4 <i>Hagg. (Eccl.)</i>       | 394.   | <i>Abb. Sh.</i>  | 232.                   |
|  | 282  | Deveron, (Salvage), 1 <i>W. Rob.</i>                             | 180.                   |
| Davis v. Johnston, (Owners), 4 <i>Sim.</i>               | 539.   | Dew v. Clarke, (Pleadings), 2 <i>Add.</i>                        | 102.                   |
| Day, Baring and others v., (Salvage), 8 <i>East</i> ,    | 57.;   | Dia et al. v. Revenge, (Captors), 3 <i>Washington's</i>          |                        |
| <i>Abb. Sh.</i>  | 556.   | (Amer.) <i>Rep.</i>  | 262.                   |
| — v. Serle, (Wages), 2 <i>Barnard</i> ,                  | 419.; 2 <i>Str.</i>                          |  | 88. n.                 |
|  | 969.   | Diamond, (Salvage), 9 <i>Jur.</i>                                | 695.                   |
| Deacle, Frankard v., (Appearance, Practice), 1           |  | Diana, Berthe, (Appeals, Prize, Slave Trade), 1                  |                        |
| <i>Hagg. (Eccl.)</i>                                     | 185.   | <i>Dodson</i> , 95. 100.   | 22. 334. 427, 428, 429 |
| Dean v. Mc'Ghee, (Freight, Mortgagees), 4 <i>Bing.</i>   |  | —, Greig, (Responsibility of Owners), 1 <i>W.</i>                |                        |
| 45.; 12 <i>Moore</i> , 185.; 2 <i>Car. &amp; P.</i>      | 387.   | <i>Rob.</i>  | 131.                   |
|  | 170. 232                                     | —, Hunt, (National Character), ( <i>Lords</i> , 1st              |                        |
|  |  | <i>March</i> , 1806).  | 243. 247               |
|  |  | —, Ledesma, (Licences), 2 <i>Acton</i> ,                         | 54.                    |
|  |  |  | 202                    |

|  | Page                                 |   | Page                             |
|--|--------------------------------------|---|----------------------------------|
| Diana, Runke, (Freight, National Character,) 5 C. Rob. 60. 67.   | 168, 169. 239                        | Dove and Cargo, (Salvage,) 1 Gallison's (Amer.) Rep. 585.   | 371. n.                          |
| (—) Stuart, v. Isemonger, (Owners,) 4 Moore, 11.   | 279. 281                             | — & Nordiska, Wanshapen, (Attachment,) 4 Moore, 275.  | 29, 30                           |
| Dickenson, Merton, (Droits of Admiralty, Navigation Laws, Prize,) Hay & Marriott, 22. 47.                              | 147, 148. 261. 327, 328, 329. n. 400 | Dowick, Van Omeron v., (Cargo, Masters,) 2 Camp. 42.  | 93. n. 223                       |
| Dickman v. Benson, (Wages,) 3 Camp. 290.; 1 Holt, 464.   | 478. 502                             | Dowling v. Harman, (Security for Costs,) 6 Mea. & W. 131.; 8 Dowl. P. C. 165.; 4 Jur. 43.         | 411, 412                         |
| Dickson, Wilson v., (Owners,) 2 B. & A. 2.; Abb. Sh. 400.  | 274, 275                             | Dowson, Stephenson v., (Freight,) 3 Beav. 342.  | 165. n.                          |
| Die Fire Damer, Guise, (Captors,) 6 C. Rob. 357.   | 88                                   | Dowthorpe, Loft, (Bottomry, Freight, Mortgages, Ships, Wages,) 2 W. Rob. 74. 77. 81. 85.          | 87.; 3 Notes of Cases, 623. 628. |
| Die Jungfer Charlotta, Otma, (Prize,) 1 Acton, 171.  | 320                                  | 28. 72, 73. 81. 164. 172. 230. 232. 416, 417. 498   |                                  |
| Diligentia, Moller, (Captors, Neutrals,) 1 Dodson, 405. 413.   | 83. 88. 266                          | Doyle v. Dallas, (Title,) 1 M. & R. 48.   | 454                              |
| Dimmock v. Chandler, (Owners,) Stra. 890.  | 269                                  | Draco, (Bottomry,) 2 Sumner's (Amer.) Rep. 157.   | 55. n. 61. n. 71. n.             |
| Diomede, (Flag Share,) 1 Acton, 69. 239.   | 161                                  | Draper v. Clark, (Witnesses,) 1 Car. & K. (N. P.), 569.   | 505                              |
| Dispatch, Addison, (Prize,) 3 C. Rob. 278.   | 321                                  | Drew, Saunders v., (Wages,) 3 B. & A. 445.  | 484                              |
| —, M'Kever, (Blockade,) 1 Acton, 163.  | 43                                   | Drie Gebroeders, (Contraband, Further Proof,) Hay & Marriott, 272.                                | 107. 174                         |
| Dobree v. Schroeder, (Owners,) 6 Sim. 291.; 2 Mylne & Cr. 489.   | 274                                  | —, Vandyk, (Joint Capture, National Character,) 4 C. Rob. 232.; 5 C. Rob. 339.                    | 187. 236. 247                    |
| Dobson v. Lyall, (Bottomry,) Abb. Sh. 100.; 3 M. & C. 454.; 8 Sym. 358.; 2 Jur. 909.; 2 Park on Ins. 873.; 8 Jur. 969. | 54, 55, 57. 65. 69                   | Drie Vrienden, Cassens, (Blockade,) 1 Dodson, 269.  | 49                               |
| —, Smith v., (Damage,) 3 Scott, N. S. 336.; 3 Mans. & Gr. 59.  | 126                                  | Drinkwater et al. v. Freight, &c., of the Spartan, (Wages,) 3 (Amer.) Jur. 26.                    | 498. n.                          |
| Dodds v. Embleton, (Owners,) 9 D. & R. 27.   | 281                                  | Driver, Cashman, (Costs and Damages, Interest,) 5 C. Rob. 145. n.                                 | 116. 181                         |
| Dods, Appleby v., (Wages,) 8 East, 300.  | 483.                                 | Drogon et al., Hobart et al., v. (Salvage) 10 Peter's (Amer.) Rep. 108.                           | 360. n. 386. n.                  |
| Dodson, Bourne v., (Title,) 1 Atk. 154.  | 450                                  | Druid, Newton, (Responsibility of Owners, Ships,) 1 W. Rob. 391. 399.                             | 271. 415, 416                    |
| Doe d. Bywater v. Brandling, (Ships,) 7 B. & C. 643.; 1 M. & R. 600.   | 417                                  | Drummond, Langdon, (Blockade, Neutral,) 1 Dodson, 104.  | 38. 46. 263                      |
| Dofter v. Cresswell, (Wages,) 7 D. R. 650.; 2 Car. & P. 161.   | 479                                  | Drummond's case, (National Character,) 2 Knapp. 295. 301. n. 314. 327. n.                         | 242                              |
| Dolder v. Huntingfield (Lord), (Wages,) 11 Ves. jun. 292.  | 503                                  | Drury v. Gardiner (Lady), (Flag Share,) 2 M. & S. 150.  | 159                              |
| Dolores, Carbonnell, (Flag Share,) 2 Dodson, 413.  | 158. 160                             | Drysdale v. The Ranger, (Wages,) Bee's (Amer.) Rep. 148.  | 493 n.                           |
| Don v. Lippman, (Courts, Law of Nations, Practice,) 5 Clark & Fin. 1.  | 117. 194. 300                        | Dublin Steam Packet Company, Fenton v., (Owners,) 1 Per. & D. 103.; 8 Ad. & E. 835.; Abb. Sh. 56. | 272                              |
| Donaldson v. Thompson, (Prize,) 1 Camp. 429.   | 316                                  | Duchess of Kent, Newby, (Mariners, Wages,) 1 W. Rob. 283. 381.                                    | 215. 494, 495, 496. 502          |
| Donegain v. Donegain, (Aliens,) 3 Knapp. 63.   | 12                                   | — Munster, Ker v., (Security for Wages,) Bun. 35.   | 411                              |
| Donegal, Chichester v., (Appeals,) 1 Add. 21. 23.  | 24, 25                               | Duckworth v. Tucker, (Flag Share, Costs, Prize,) 2 Taunt. 7.                                      | 162. 313                         |
| — v. Donegal, (Evidence,) 3 Phil. 609.   | 154                                  | Dugger, Austin v., (Costs,) 1 Add. 307.   | 115                              |
| Donnelly v. Popham, (Flag Share,) 1 Taunt. 1.  | 159                                  | Duke, Castle v., (Mortgagees,) 5 C. & P. 359.   | 233                              |
| Donna Barbara, Luiz, (Captors, Slave Trade,) 2 Hagg. 366. 373. 446., App. C.   | 84. 426. 438.                        | — of Bedford, Morris, (Bottomry,) 2 Hagg. 295.  | 300.                             |
| — Marianna, (Slave Trade,) 1 Dodson, 91.   | 426, 427, 428                        | — of Clarence, College, (Salvage,) 1 W. Rob. 346.   | 55. 64. 79                       |
| Dordrecht, Admiral Lucas, (Joint Capture,) 2 C. Rob. 55. 65.   | 184, 185                             | — of Manchester, (Damage, Owners, Pilots Salvage,) 4 Notes of Cases, 375. 582.; 10 Jur. 865.      | 140. 280. 284. 371, 372          |
| Dorothy Foster, Sowden (Salvage, military,) 6 C. Rob. 88.  | 403. 407                             | — of Sussex, Fors, (Costs, Damage, Responsibility of Owners,) 1 W. Rob. 270. 274.                 | 115. 120. 135, 136. 280, 281     |
| Dosseitei, (Salvage,) 10 Jur. 866.   | 363. 371                             | Dumaresque, Bronard v., (Mortgagees,) 3 Moore, 457.   | 231                              |
| Doubleday, Lorry v., (Costs,) 5 M. & S. 159. n.  | 114                                  | Duncan (Lord) v. Mitchell, (Flag Share,) 4 M. & S. 105.   | 162                              |
| Douglas v. Eyre, (Evidence,) Gilpin's (Amer.) Rep. 147.  | 152. n.                              | Duncan v. M'Calmont, (Bottomry,) 3 Beav. 409.; Abb. Sh. 163.                                      | 54                               |
| —, Munroe v., (National Character,) 5 Mod. 379.  | 237                                  |   |                                  |
| — v. Russell, (Mortgagees, Navigation Laws, Wages,) 4 B. & Ad. 533.; 4 Sim. 524. 533.; 1 Mylne & R. 468. 488.          | 233. 253. 499                        |   |                                  |

## TABLE OF CASES.

iv

|  | Page                             |  | Page                        |
|--|----------------------------------|--|-----------------------------|
| Dundee, Holmes, (Interest, Responsibility of Owners, Practice,) 2 <i>Hagg.</i> 137. 143.   | 182.                             | Edel Catharina, Clansen, (Licences,) 1 <i>Dodson</i> , 55.                                       | 204                         |
| — (Owners,) 1 <i>Hagg.</i> 109. 127.   | 276. 301                         | Eden, (Owners,) 10 <i>Jur.</i> 297.; 4 <i>Notes of Cases</i> , 460.                              | 276, 277                    |
| Dunkeld, Jameson v., (Damage,) 12 <i>Moore</i> , 148.  | 274, 275                         | —, Le Caux v., (Prize,) 2 <i>Dougl.</i> 594.   | 313                         |
| Dunkley v. Bulwer, (Wages,) 6 <i>Esp.</i> 86.; 2 <i>Camp.</i> 330. n.; 1 <i>Sid.</i> 179.  | 132                              | —, Paul v., (Wages,) <i>Abb. Sh.</i> 450. 620.; 6 <i>T. R.</i> 325. n.                           | 480                         |
| Dunvegan Castle, Howard, (Bottomry, Mortgages, Wages,) 3 <i>Hagg.</i> 329. 331.  | 480. 483                         | Edie, Pray v., (Security for Costs,) 1 <i>T. R.</i> 267.   | 412                         |
| Dunwich (Bailliffs of) v. Sterry, (Wreck,) 1 <i>B. &amp; Adm.</i> 831.   | 67. 231. 500                     | Edin v. East India Company, (Customs and Usages,) 1 <i>W. Black.</i> 299.; 2 <i>Burr.</i> 1216.  | 120                         |
| Durant v. Durant, (Answers, Contempt, Pleadings, Practice,) 1 <i>Add.</i> 114. 118.; 2 <i>Add.</i> 267.  | 515                              | Edinburgh and London Shipping Co., Le Neve v., (Damage,) 1 <i>S.</i> 378.; 20 <i>F. C.</i> 580.  | 124                         |
| Durell v. Mattheson, (Security for Costs,) 3 <i>Moore</i> , 33.; 8 <i>Tunst.</i> 711.  | 20. 101. 293. 306                | Edmonson v. Walker, (Wages,) 1 <i>Show.</i> 177.   | 472                         |
| Dutch East India Company, Hamilton v., (Evidence,) 8 <i>Bro. P. C.</i> 264.  | 413                              | Edmonton v. Franklin, (Wages,) <i>Forts.</i> 231.  | 472                         |
| Dutens v. Robson, (Prohibition,) 1 <i>H. Black.</i> 100.   | 152                              | Edward, Bartlett, (Contraband,) 4 <i>C. Rob.</i> 68.   | 104. 107. 109               |
| Dydden, (Salvage,) 1 <i>Notes of Cases</i> , 115.  | 100.                             | Edwards and Mary, Tilly, (Capture, Recapture, Salvage, military,) 3 <i>C. Rob.</i> 305.          | 93. 350. 403. 404           |
| —, (Tenders,) 4 <i>Monthly Law Mag.</i> 153.   | 371 n.                           | —, Handley and Jones v., (Appeals, Witnesses,) 8 <i>Jur.</i> 677.; 1 <i>Curt.</i> 722. 743. 754. | 23, 24, 25. 28. 505. n.     |
| Dymart v. Dysart, (Answers,) 3 <i>Carteis</i> , 545.   | 448. n.                          | —, Lord Chidworth v., (Interest,) 8 <i>Ves.</i> 48.  | 181                         |
|  | 20. 21                           | — and others, Lovekin and others v., (Paupers,) 1 <i>Phil.</i> 179. 183.                         | 282                         |
| E.   |                                  | Edwin, Robertson, (Security for Costs, Wages,) 3 <i>Hagg.</i> 364.                               | 411. 472. 502               |
| Eades v. Vandeput, (Wages,) 5 <i>East</i> , 39. n.; 4 <i>Dougl.</i> 1.   | 499                              | Eendraught, (Joint Capture,) 3 <i>C. Rob.</i> 194.; <i>App.</i> 9. <i>P.</i> 35.                 | 192                         |
| Eagle, Litty, (Captors, National Character, Slave Trade,) 1 <i>W. Rob.</i> 236. 245.; 1 <i>Notes of Cases</i> , 64.                              | 83, 84. 243. 426, 427. 432. 441. | Eenrom, Fromer, (Bottomry, Further Proof, Owners, Prize,) 2 <i>C. Rob.</i> 1. 5. 8. 15.          | 59                          |
| —, Marsan, (Blockade,) 1 <i>Acton</i> , 65.  | 39                               | —, Effort, (Salvage,) 3 <i>Hagg.</i> 165.  | 175. 271. 322               |
| —, Weeks, (Trade with the Enemy,) 4 <i>C. Rob.</i> A. 6.   | 460                              | Effurth v. Smith, (Licences,) 5 <i>Tunst.</i> 329.   | 201                         |
| Eaken v. Thom, (Wages,) 5 <i>Esp. N. P. C.</i> 6.; <i>Abb. Sh.</i> 639.  | 482                              | Egglesfield's case, (Pirates,) 1 <i>Vent.</i> 173.; 2 <i>Kob.</i> 828.                           | 288. n.                     |
| Ealing Grove, Falconer, (Wages,) 2 <i>Hagg.</i> 15. 19.  | 488. 490. 491                    | Egyptienne, Parker, (Possession,) 1 <i>Hagg.</i> 346.  | 297                         |
| Earl Bathurst, (Damage,) 3 <i>Monthly Law Mag.</i> 446.  | 139. n.                          | Einigheden, Molsen, (Prize,) 1 <i>C. Rob.</i> 323.   | 317                         |
| — Grey, Topham, (Salvage,) 3 <i>Hagg.</i> 363.   | 385. 393                         | Ekins v. E. I. Company, (Interest, Title,) 1 <i>P. W.</i> 395.; 2 <i>Bro. P.</i> 72.             | 181. 452                    |
| Easterby, Walker v., (Security for Costs,) 6 <i>Ves. jura.</i> 612.  | 414                              | Elan v. Rees, (Security for Costs,) 3 <i>Doug.</i> 382.  | 412                         |
| East India Company, Edin v., (Customs and Usages,) 1 <i>W. Black.</i> 299.; 2 <i>Burr.</i> 1216.; 1 <i>P. W.</i> 395.; 5 <i>B. &amp; A.</i> 617. | 120                              | Eleanor, (Captors,) 2 <i>Wheaton's (Amer.) Rep.</i> 345.   | 85 n.                       |
| —, Ekins v., (Interest, Title,) 1 <i>P. W.</i> 392.; 2 <i>Bro. &amp; P.</i> 72.  | 81. 452                          | —, Hall, (Evidence, Navigation Laws,) <i>Edw.</i> 135. 163.                                      | 152. 250. 256. 258. 260     |
| —, Freeman v., (Cargo, Masters,) 1 <i>D. &amp; R.</i> 234.; 5 <i>R. &amp; A.</i> 617.; <i>Abb. Sh.</i> 11.                                       | 93. n. 223                       | —, Robertson, (Admiralty,) 6 <i>C. Rob.</i> 39.  | 5. n.                       |
| — v. Henaly, (Agents,) 1 <i>Esp.</i> 112.  | 10                               | Eleanora Catharina, Kreagh, (Average, Salvage, military,) 4 <i>C. Rob.</i> 156.                  | 33. 405                     |
| —, Mayor of Lyons v., (Aliens,) 1 <i>Moore</i> , 175.  | 11                               | — Charlotta, Osterman, (Salvage, Tender,) 1 <i>Hagg.</i> 156.; 1 <i>Park on Ins.</i> 301.        | 371. 389.                   |
| Ebenezer, (Pleadings, Salvage,) 7 <i>Jur.</i> 1117.; 8 <i>Jur.</i> 386.  | 291. 375. 380                    | — Whileimina, Zimmerman, (Contraband, National Character,) 6 <i>C. Rob.</i> 321. 334.            | 107. 110. 241               |
| —, Christensen, (Freight, Trade with Enemy,) 6 <i>C. Rob.</i> 250.   | 102. 170. 462                    | Eliza Ann, Freeman, (Evidence,) 1 <i>Hagg.</i> 257.  | 102. 256                    |
| —, Varwell, (Damage,) 7 <i>Jur.</i> 1118.; 2 <i>W. Rob.</i> 206. 210.  | 124. 139. 140                    | — and others, (Aliens, Neutrals, Treaties, War,) 1 <i>Dodson</i> , 245.                          | 13. 264. 265, 266. 465. 503 |
|  |                                  | Eliza, Burrough, (Captors,) 1 <i>Acton</i> , 336.  | 92                          |
|  |                                  | (—) Heathorn v. Darling, (Bottomry, Salvage,) 1 <i>Moore</i> , 5.                                | 58. 368                     |

|  | Page                                    |   | Page                                  |
|--|---|---|---------------------------------------|
| Eliza, Ireland, (Mariners, Mariners' Contracts, Wages,) 1 <i>Hagg.</i> 182. 186.             | 215. 218. 487. 490                      | Endraught, Broetjas, (National Character, Trade with the Enemy,) 1 <i>C. Rob.</i> 19.   | 244. 458                              |
| — Jane, Findlay, (Damage, Practice,) 3 <i>Hagg.</i> 335.                                     | 5. n. 139. 303                          | Enterprise, Crosbie, (Pilots, Salvage,) 2 <i>Hagg.</i> 178. n.  | 285. 387                              |
| —, Walwick, (Bottomry,) 1 <i>W. Rob.</i> 328.; 1 <i>Notes of Cases</i> , 305.                | 80                                      | Eolides, Malngam, (Damage, Owners,) 3 <i>Hagg.</i> 367.   | 128. 279                              |
| —, Weddell, (Bottomry,) 3 <i>Hagg.</i> 87.; 2 <i>Park on Ins.</i> 881.                       | 73. 75                                  | Esperanza, Boothe et al. v., (Salvage,) <i>Bee's (Amer.) Rep.</i> 92.   | 406 n.                                |
| — and Haty, Claasby, (Prize,) 6 <i>C. Rob.</i> 185.  | 319                                     | Estrella, (Prize,) 4 <i>Wheaton's (Amer.) Rep.</i> 298.   | 311. n.                               |
| Elizabeth, (Wages,) 6 <i>Jur.</i> 156.   | 500                                     | Etrusca, (Prize,) 4 <i>C. Rob.</i> 462 n.   | 319                                   |
| —, (Pilots, Salvage,) 8 <i>Jur.</i> 365.   | 285. 387                                | Eugene, Bourne, (Salvage,) 3 <i>Hagg.</i> 156. 160.   | 352. 367. 397                         |
| —, Gull, (Mariners, Masters, Wages,) 2 <i>Dodson</i> , 403. 407. 412.                        | 214, 215, 216. 220. 222. 482, 483. 502. | Eugenie, (Salvage,) 8 <i>Jur.</i> 192. n.; 3 <i>Notes of Cases</i> , 430.   | 376, 376. n. 380.                     |
| —, Holderness, (April 29. 1846) (Salvage), 362. n.   |   | Europa, Christian, (Further Proof,) 1 <i>Acton</i> , 320.   | 176                                   |
| —, Lisboa, (Admiralty, Appeals,) 1 <i>Hagg.</i> 226.   | 7. 26. 96                               | —, Schmidt, (Licences,) <i>Edw.</i> 342.  | 204                                   |
| —, Nowell, (Blockade,) <i>Edw.</i> 198.  | 49                                      | —, Sundberg, (Licences,) <i>Edw.</i> 358.   | 197                                   |
| —, Soestadt, (Practice,) 2 <i>Acton</i> , 58. n.   | 306                                     | Evans v. Evans, (Allegations, Evidence, Pleadings, Witnesses,) 1 <i>Hagg. (Cons.)</i> 56. n.; 10. n.                                      | 18. 150. 157. 291, 292. 506.          |
| —, Trip, (Prize,) 1 <i>Acton</i> , 10.   | 392                                     | — v. Knight and Moore, (Allegations, Witnesses,) 3 <i>Phil.</i> 418. 423.; 1 <i>Add.</i> 138. 143.  | 16. 17. 19. 508                       |
| — and Jane, Miller, (Possession,) 1 <i>W. Rob.</i> 278.                                      | 297                                     | —, Par. v., (Bail, Prohibition,) <i>T. Raym.</i> 78.; 2 <i>Ld. Raym.</i> 1286.  | 34. 345                               |
| Elling, Parquot v., (Security for Costs,) 1 <i>H. Black.</i> 106.                            | 412                                     | —, Peddle v., (Proctors,) 3 <i>Hagg. (Eccl.)</i> , 687.   | 343, 344                              |
| Elliotta, (Salvage,) 2 <i>Dodson</i> , 75.   | 382                                     | — v. Williams, (Material Men,) <i>Abb. Sh.</i> 128.   | 229                                   |
| Ellis, Broome v., (Witnesses,) 2 <i>Lee</i> , 525.   | 508                                     | Everard, Keed v., (Witnesses,) 3 <i>Curtis</i> , 337.   | 509                                   |
| — v. Turner, (Owners,) 8 <i>T. R.</i> , 531.   | 271                                     | Evering v. Chiffenden, (Security for Costs,) 1 <i>W. &amp; H.</i> 560.; 7 <i>Dowl. P. C.</i> 536.; 3 <i>Jur.</i> 288.; 9 <i>Sim.</i> 497. | 413                                   |
| Ellison v. Ship Bellona, (Wages,) <i>Bee's (Amer.) Rep.</i> 114.                             | 477. n.                                 | Evert, Everts, (Contraband,) 4 <i>C. Rob.</i> 354.  | 104                                   |
| El Navarro, (Salvage, military,) 4 <i>C. Rob.</i> 147.                                       | 402                                     | Everth v. Tunno, (Licences,) 1 <i>B. &amp; A.</i> 142.; 1 <i>Stark.</i> 508.  | 204                                   |
| Elphinstone v. Befreechund, (Prize,) 1 <i>Knapp.</i> 317. 329.                               | 311                                     | Ewell Grove, Burton, (Salvage,) 3 <i>Hagg.</i> 209. 221.  | 376. 381. 385                         |
| El Rayo, (Head-money,) 1 <i>Dodson</i> , 42.   | 180                                     | Ewer v. Jones, (Admiralty, Limitations, Prohibition,) 6 <i>Mod.</i> 26.; 2 <i>Ld. Raym.</i> 935. 6. n.                                    | 213. 345                              |
| Elsabe, Maas, (Convoy, Visitation and Search,) 4 <i>C. Rob.</i> 400.                         | 111. 469                                | —, Walpole v., (Average, Bottomry,) 2 <i>Park on Ins.</i> 565. 892.   | 33. 76. n.                            |
| Elsebe, Maas, (Captors, Claimants, Crown,) 5 <i>C. Rob.</i> 173. 190.                        | 91. 98. 310. 327, 328                   | Exchange, L'Arina v., (Wages,) <i>Bee's (Amer.) Rep.</i> 198.   | 475. n.                               |
| Elsworth v. Woolmore, (Wages,) 5 <i>Esp.</i> 84.   | 479                                     | —, Ledet, (Trade with the Enemy,) <i>Edw.</i> 39.   | 456                                   |
| Elvira (schooner), Hand et al. (Wages,) v., <i>Gilpin's (Amer.) Rep.</i> 60.                 | 386. n.                                 | —, (schooner,) v. M'Faddon, (Owners, Salvage, Ships, Title,) 2 <i>Cranch's (Amer.) Rep.</i> 115.  | 266. n. 357. n. 415. n. 452. n.       |
| Emancipation, Tucker, (Bottomry,) 1 <i>W. Rob.</i> 124. 128.                                 | 59. 60. 64. 69                          | Exeter, Robinett v., (Mariners, Wages, Witnesses,) 2 <i>C. Rob.</i> 261.  | 214. 483. 493, 494, 495, 496. 505. n. |
| Emanuel, Soderstrom, (Contraband, Freight, Trade with the Enemy,) 1 <i>C. Rob.</i> 296. 302. | 109. 170, 171. 457. 462                 | —, Whitford, (Bottomry,) 1 <i>C. Rob.</i> 173. 176.   | 75. 78. 302                           |
| Embleton, Dodds v., (Owners,) 9 <i>D. &amp; R.</i> 27.                                       | 281                                     | Exmouth, Owen, (Mortgagees, Ships,) 2 <i>Hagg.</i> 88. n.   | 230. 416. n.                          |
| Emden, Meyer, (National Character, Trade with the Enemy,) 1 <i>C. Rob.</i> 16.               | 240. 242. 458                           | Experimento, Garcia, formerly Experiment, (Possession, Title,) 2 <i>Dodson</i> , 38.  | 295. 451                              |
| Emma, (Salvage,) 8 <i>Jur.</i> 651.; 2 <i>W. Rob.</i> 316.; 3 <i>Notes of Cases</i> , 114.   | 374. 377. 379. 398                      | Exton, Sands v., (Admiralty, Prohibition,) 2 <i>Show.</i> 303.; <i>T. Raym.</i> 488.; <i>Shin.</i> 91.                                    | 7. 345                                |
| —, Mallgren, (Licence,) <i>Edw.</i> 366.   | 203                                     | Eyre, Douglas v., (Evidence) <i>Gilpin's (Amer.) Rep.</i> 147.  | 153. n.                               |
| Emperor, Liebert et al. v., (Bottomry,) <i>Bee's (Amer.) Rep.</i> 339.                       | 61. n.                                  | Eyre, Grierson v., (Courts,) 9 <i>Ves. jun.</i> 347.  | 117                                   |
| Empress, Moran, (Allegations, Joint Capture,) 1 <i>Dodson</i> , 369.                         | 16. 184. 188                            | — v. Palgrave, (Licences,) 2 <i>Camp.</i> 605.  | 208                                   |
| Emu, Nelson, (Salvage, Tenders,) 1 <i>W. Rob.</i> 15.  | 379. 449                                |   |                                       |
| Emulous, (Salvage,) 1 <i>Summer's (Amer.) Rep.</i> 207.                                      | 354. n. 369. n.                         |   |                                       |
| Enchantress, Killock, (Damage, personal, Witnesses,) 1 <i>Hagg.</i> 395.                     | 143. 507                                |   |                                       |
| Endraught, Bonkins, (Contraband, National Character, Prize,) 1 <i>C. Rob.</i> 21. 25.        | 105. 110. 240. 317                      |   |                                       |



## TABLE OF CASES.

lvii

| F.  |   | Page |
|---|---|------|
| Fabius, Cowper, (Appeals, Navigation Laws, Jurisdiction,) 2 C. Rob. 245. 248.   | 22. n. 257  |      |
| Fadreland, Hoop, (Captors, Joint Capture,) 5 C. Rob. 123.   | 87. 184. 186                                      |      |
| Fairlie v. Hastings, (Evidence,) 18 Ves. jun. 123.  | 154   |      |
| Faith v. Pearson, (Prize,) 6 Taunt. 439. ; 2 Marsh. 133; 4 Camp. 357. ; Holt, 113.  | 313   |      |
| —, Tremain, v., (Costs,) 6 Taunt. 88.   | 114   |      |
| Falcon, Atkins, (Aliens, National Character, Prize, Title, Witnesses,) 6 C. Rob. 194. 197. 201. ; 1 Acton, 331.                           | 13. 101. 236. 238. 316. 323. 333. 456. 505        |      |
| Fama, (Owners,) 2 W. Rob. 184.  | 278   |      |
| —, Butler, (National Character,) 5 C. Rob. 106.   | 234   |      |
| Fanny, Lawton, (Prize, Salvage, military,) 1 Dodson, 443. 448.  | 262. 319. 323. 406. 469. n.                       |      |
| — and Elmira, Hicks, (Possession, Title,) Edw. 117. 120.  | 19. 297. 452. 453                                 |      |
| Farmer v. Tegg, (Slave Trade,) 7 T. R., 186.  | 440   |      |
| Farquharson, Sheriff v., (Security for Costs,) 1 Todd's Prac. 579.  | 413   |      |
| Favourite, Lambert, (Salvage,) 2 W. Rob. 255.   | 361   |      |
| —, Nicholas de Jersey, (Wages,) 2 C. Rob. 232.  | 475   |      |
| Farley v. Bourdillon, (Licences,) 3 Taunt. 546.   | 198   |      |
| Fearon, Busk v., (Bottomry,) 4 East, 319. ; 1 Smith, 105.   | 71  |      |
| Feize v. Bell, (Licences,) 4 Taunt. 4.  | 199   |      |
| — v. Newnham, (Licences,) 16 East, 197. 198.  | 208   |      |
| — v. Thompson, (Licences,) 1 Taunt. 121.  | 198. 201  |      |
| — v. Waters, (Licences,) 2 Taunt. 248.  | 197. 198. 201                                     |      |
| Felicity, Smith, (Captors,) 2 Dodson, 385.  | 86. 87. 89  |      |
| Fell, Smith v., (Evidence,) 2 Curteis, 617. 697.  | 155   |      |
| Fenton v. Dublin Steam Packet Company, (Owners,) 1 Per. & D. 103. ; 8 Ad. & E. 835. ; Abb. Sh. 56.  | 272   |      |
| — and another v. Pearson and another, (Statutes,) 15 East, 419. ; Abb. Sh. 517.   | 446   |      |
| Fenwick v. Bell, (Evidence,) 1 Car. & K. 312.   | 156   |      |
| Ferguson v. Fyffe, (Limitations, Practice,) 8 Clark & Fin. 121.   | 194. 212. 300.                                    |      |
| Fergusson, King v., (Letters of Marque,) Edw. 84.   | 193   |      |
| Field, Barton v., (Winwick,) (Appeals, Inhibition,) 4 Moore, 273. ; 8 Jur. 113.   | 25. 181   |      |
| Filewood v. Cousens and others, (Paupers,) 1 Add. 286.  | 282   |      |
| Financier, Cathel, (Joint Capture,) 1 Dodson, 61.   | 167. 183  |      |
| Finch, Firth v., (Witnesses) 1 Lee, 437.  | 509   |      |
| —, Lady Hatton, (In the Goods of,) 3 Hagg. 255.   | 343   |      |
| Finlay v. Thompson, (Damage,) 4 D. 776. 133. n.   |   |      |
| Finnis, Chevalier v., (Security for Costs,) 3 Moore 602. ; B. & B. 277.   | 412   |      |
| Firth v. Finch, (Witnesses,) 1 Lee, 437.  | 509   |      |
| Fisher, Anthon v., (Ransom,) 3 Dougl. 166. 649. n.  | 347   |      |
| Fisher, Anthon v., (Aliens,) Ex Chamb.; 2 Dougl. 650. n.  | 12  |      |
| Fisher v. Ogle, (Evidence,) 1 Camp. 418.  | 152   |      |
| Fitzgerald v. Whitmore, (Security for Costs,) 1 T. R. 362.  | 413   |      |
| Fitzhugh, Vaughan v., (Material Men,) 3 Jur. 1002.  | 230   |      |
| Fitzjames, (Slaves,) Alfred v., 3 Esp. 3.   | 421   |      |
| Flack, Owen v., (Evidence,) 2 Chin. & Stra. 606.  | 152   |      |
| Flad Oyen, Martensen, (Further Proof, Prize, Salvage, military, Title,) 1 C. Rob. 134. 140.   | 175. 316. 406. 454                                |      |
| Fletcher v. Braddick, (Damage, Owners,) 2 N. R. 182. ; Abb. Sh. 55.   | 138. 272. 277                                     |      |
| — v. Le Breton, (Pleadings,) 3 Hagg. (Eccl.), 365.  | 293   |      |
| —, Planche v., (Navigation Laws,) 1 Dougl. 251.   | 248   |      |
| Flindt v. Crockatt, (Licences,) 5 Taunt. 674. ; 15 East, 525.   | 196. 197. 199                                     |      |
| — v. Scott, (Licences,) 5 Taunt. 674. ; 15 East, 525.   | 196. 197. 199                                     |      |
| — v. Waters, (Aliens,) 15 East, 260.  | 15  |      |
| Flinn et al. v. Leander (Derelicts,) Bee's (Amer.) Rep. 260.  | 144. n.   |      |
| Flood, Spry v., (Statutes,) 2 Curt. 365.  | 447   |      |
| Flora, (Salvage,) 3 Hagg. 430. n.   | 382   |      |
| —, Baptista, (Prize,) 6 C. Rob. 360.  | 318   |      |
| —, Findlay, (Admiralty, Ships,) 1 Hagg. 300.  | 6. 7. 221. 416                                    |      |
| Floreat Commercium, Radecker, (Contraband,) 3 C. Rob. 178.  | 109   |      |
| Florida, (Attachment, Blockade, Slave Trade,) Provenca, 2 W. Rob. 97.   | 30. 340. 442                                      |      |
| Foljamb and another, Neclanham v., (Wages,) 6 Vin. Abr. 439.  | 475. 498  |      |
| Foltina, Julius, (Droits of Admiralty, National Character,) 1 Dodson, 450.  | 146. 149. 234                                     |      |
| Fonblanque, Cunningham v., (Customs & Usages) 6 Car. & P. 44.   | 121   |      |
| Food v. Boucher, (Security for Costs,) 1 Hodge, 58.   | 411   |      |
| Foot, Wilson v., (Costs,) Bull. N. P. 335.  | 115   |      |
| Forbes v. Cochrane, (Slaves,) 3 D. & R. 679. ; 2 B. & C. 448.   | 421   |      |
| Forsboom v. Krugor, (Wages,) 3 Camp. 197.   | 499   |      |
| Forsigheid, (Joint-Capture,) Edw. 126.  | 188   |      |
| —, Willadson, (Joint-Capture,) 3 C. Rob. 311. 316.  | 186. 188, 189                                     |      |
| Forster, Ingledew v., (Bottomry,) 4 Vin. Abr. 281.  | 54  |      |
| —, Weston v., (Bottomry,) 2 Bing. N. & C. 693.  | 61  |      |
| —, Wilson v., (Prize,) 6 Taunt. 25. ; 1 Marsh. 425. ; Abb. Sh. 27.  | 332. 454  |      |
| Forsyth, Staniforth v., (Licences,) 5 Taunt. 726.   | 206   |      |
| Fortitude, (Bottomry, Material Men,) per Story, J., Circ. C. of United States, at Boston, May Term, 1898, Curteis' (Amer.) Adm. Dig. 518. | 55. n. 58. n. 62. n. 64. n. 68. n. 79. n. 229. n. |      |
| —, Douglas, (Costs, Freight, Mortgagees,) 2 W. Rob. 217. 224. ; 8 Jur. 23. ; 2 Notes of Cases, 515.                                       | 112. 165. 230                                     |      |
| —, Henrickson, (Allegations, Practice,) 2 Dodson, 58. 70.   | 19. 163. 305, 306                                 |      |
| Fortuna, Braseh, (Prize,) Edw. 236.   | 321   |      |
| —, Gerrits, (Salvage, military,) 4 C. Rob. 78.  | 100. 403  |      |
| —, Koedt, (Freight,) Edw. 56.   | 166, 167  |      |

|  | Page                    |  | Page                             |
|--|-------------------------|--|----------------------------------|
| Fortuna, Quest, (Salvage,) 4 <i>C. Rob.</i> 193.   | 383                     | Frederick, Worth, (National Character,) 5 <i>C. Rob.</i>   | 241                              |
| ——, Rhode, (Blockade,) 5 <i>C. Rob.</i> 27.  | 49                      | —— and Mary Ann, Andriessen, (Prize,) 6  | 390                              |
| ——, Smith, (Claimant,) 2 <i>C. Rob.</i> 92.  | 97                      | —— <i>C. Rob.</i> 213.   | 390                              |
| ——, Tadsen, (Freight,) 4 <i>C. Rob.</i> 278.   | 168. 173                | Free, Burgoyne v., (Allegations,) 2 <i>Hagg. (Eocl.)</i>   | 17                               |
| ——, Verissimo, (Captors, National Character,   |                         | 480.   | 17                               |
| Prize, Slave Trade,) 1 <i>Dodson</i> , 83. 90.   |                         | Freedom, Herriek, (Blockade,) 1 <i>Acton</i> , 64.   | 39                               |
| 85. 243. 310. 319. 426, 427  |                         | Freeland v. Walker, (Licences,) 4 <i>Tasnt.</i> 478.   | 201                              |
| Forty-nine Casks of Brandy, The King v., (Ad-  |                         | Freeman v. East India Company, (Cargo, Masters,) 1 <i>D. &amp; R.</i> 234.; 5 <i>B. &amp; A.</i> 617.; <i>Abb. Sh.</i> 11. | 93. 93. n. 223                   |
| miralty, Crown, Derelict, Neutrals, Wreck,) 3 <i>Hagg.</i> 203. 271. 275. 279. 282, 283. 287. 289., 294.; <i>Inst.</i> 113. 140. 275.; 6 <i>Vin., Ab.</i> 121. |                         | French Guiana, (Joint Capture, Prize,) 2 <i>Dodson</i> , 15. 157. 162. 169.  | 185. 310. 314. 327. 332. 335     |
| 1. n. 5. n. 118. 120. 148, 149. 265. 409, 410. 511, 512. 515. 517.   |                         | ——, Robertson v., (Title,) 4 <i>East</i> , 130.  | 451                              |
| Foster, Atkinson v., (Witnesses,) 1 <i>Man. Gr. &amp; Sc.</i> 713.; 14 <i>Law Jour. N. S.</i> 237.   | 504                     | Freundschaft, Kock, (Licences,) 1 <i>Dodson</i> , 316.   | 202                              |
| —— v. Stewart, (Wages,) 3 <i>M. &amp; S.</i> 191.  | 499                     | Frey, Jordt, (Damage,) 5 <i>C. Rob.</i> 75.  | 156                              |
| Fox and others, (Blockade,) <i>Edw.</i> 220. 311. 390.   | 37. 40. 43              | Friends, Bell, (Wages,) 4 <i>C. Rob.</i> 143.  | 481                              |
| ——, Bowen v., (Owners, Possession, Ship's Register,) 5 <i>M. &amp; R.</i> 5.; 10 <i>B. &amp; C.</i> 41.; 4 <i>Car. &amp; P.</i> 452.                           | 269. 297. 419, 420      | ——, Creighton, (Freight,) <i>Edw.</i> 246.   | 167                              |
| Francis and Eliza, (Salvage, Salvage, military,) 2 <i>Dodson</i> , 115.  | 361. 363. 408           | (——) General Steam Navigation Company v. Tonkins, (Damage,) 4 <i>Moore</i> , 322.  | 125. 135. 136. 139               |
| —— of Leith, Syme, (Ship's Register,) 2 <i>Dodson</i> , 420. 431.  | 418, 419                | ——, Ollman, (Damage, Trinity Masters,) 6 <i>W. Rob.</i> 478. 485.  | 185. 136. 466                    |
| —— Mary, Kendall, (Salvage,) 2 <i>Hagg.</i> 89.  | 382                     | Friendship, (Trade with the Enemy,) <i>Hay &amp; Marriott</i> , 79.  | 463                              |
| —— Turn's Claims, (Liens,) 8 <i>Cranch's (American) Rep.</i> 518.  | 211. n.                 | ——, Collard, (Contraband,) 6 <i>C. Rob.</i> 420.   | 106. 308                         |
| Franco and Franco v. Alvarenza and De Pinna, (Unlivery & Appraisement,) 1 <i>Lee</i> , 187.  | 467                     | ——, Cox, (Appeals, Navigation Laws,) 1 <i>Dodson</i> , 374.  | 27. 256. 256. n. 259             |
| Franklin, Brown v., (Prize,) <i>Comb.</i> 474.   | 312                     | Fromont, Brueker v., (Owners,) 6 <i>T. R.</i> 659.   | 271                              |
| ——, Dona, (Further Proof, National Character,) 6 <i>C. Rob.</i> 127.   | 175. 239                | Frontine v. Frost, (Wages,) 3 <i>B. &amp; P.</i> 302.; <i>Abb. Sh.</i> 648.  | 492                              |
| ——, Edmonton v., (Wages,) <i>Forta.</i> 231.   | 472                     | Frost, Frontine v., (Wages,) 3 <i>B. &amp; P.</i> 302.; <i>Abb. Sh.</i> 648.   | 492                              |
| ——, Forsyth, (Prize,) 2 <i>Acton</i> , 106.  | 321                     | Fruit Preserver, Brown, (Mortgagees, Possession,) 2 <i>Hagg.</i> 181.  | 292. 293. 298                    |
| ——, Goodrich, (Prize Agents,) 4 <i>C. Rob.</i> 404.  | 341                     | Furchal, Baptiste, (Salvage,) 3 <i>Hagg.</i> 386. n.   | 363                              |
| ——, ———, (Salvage, military,) 4 <i>C. Rob.</i> 147.  | 402. 408                | Furie, Pleit, (Convoy, Joint Capture,) 3 <i>C. Rob.</i> 9.   | 111. 185                         |
| —— v. Hosier, (Material Men,) 4 <i>B. &amp; Ad.</i> 341.   | 226                     | Fyffe, Ferguson v., (Limitations, Practice,) 8 <i>Clarke &amp; Fin.</i> 121.   | 194. 212. 304                    |
| ——, Segerbrath, (Contraband, Trade with the Enemy,) 3 <i>C. Rob.</i> 217.  | 109, 110. 457           |  |                                  |
| Fraser v. Fraser, (Costs, Witnesses,) 4 <i>Notes of Cases</i> , 157. 320.  | 113. n. 507. n.         | G.   |                                  |
| ——, Limerick and Waterford Railway Company v., (Security for Costs,) 4 <i>Bing.</i> 394.; 1 <i>M. &amp; B.</i> 23.   | 413                     | Gage, Mitchell, (Salvage, military,) 6 <i>C. Rob.</i> 273.   | 403                              |
| —— v. Palmer, (Security for Costs,) 3 <i>Jur.</i> 154.   | 414                     | Gale v. Laurie, (Owners,) 7 <i>D. &amp; R.</i> 711.; 5 <i>B. &amp; C.</i> 156.; 1 <i>Hagg.</i> 109.; <i>Abb. Sh.</i> 401.  | 274                              |
| Fraser, Wilkinson v., (Wages,) 4 <i>Esp.</i> 182.  | 487                     | Galen, Rogers, (Convoy, Joint Capture,) 1 <i>Dodson</i> , 430.; 2 <i>Dodson</i> , 21. 25.                                  | 111. 184. 186. 187. 191. 505. n. |
| Frau Ilisabe, Pieper, (Blockade,) 4 <i>C. Rob.</i> 63.   | 38                      | Ganesford v. Levy, (Security for Costs,) 2 <i>H. Black.</i> 118.   | 412                              |
| —— Magdalena, Hansen, (Licences,) <i>Edw.</i> 367.   | 203                     | Gapper, Gould v., (Courts, Statutes,) 5 <i>East</i> , 370.; 1 <i>Smith</i> , 328.  | 117. 448                         |
| —— Margaretha, Struer, (Contraband,) 6 <i>C. Rob.</i> 92.  | 103                     | Ganges, Steel, (Salvage,) 1 <i>Notes of Cases</i> , 87.  | 389. n.                          |
| —— Maria, Jansen, (Ships,) 2 <i>C. Rob.</i> 292.   | 418.                    | Garbutt, Willis v., (Security for Costs,) 1 <i>Y. &amp; J.</i> 511.  | 413                              |
| Frederick, Bodom, (Aliens, Wages,) 1 <i>Dodson</i> , 266.  | 15. 473, 474            | Gardiner, Gore v., (Bottomry,) 3 <i>Moore</i> , 79.  | 57. 67                           |
| ——, Hearn, (Practice, Proctors, Wages,) 1 <i>Hagg.</i> 211. 220.   | 307. 342. 448, 449. 490 | ——, (Lady) Drury v., (Flag Share,) 2 <i>M. &amp; S.</i>  | 159                              |
| —— Molke Boysen, (Blockade, Contraband,) 1 <i>C. Rob.</i> 86.  | 38, 39. 45. 47. 108     | —— v. (Flag Share,) Lynne, 13 <i>East</i> , 159.   | 159. 161                         |
| ——, Thurman, (Pilots, Salvage,) 1 <i>W. Rob.</i> 16.   | 285. 379. 387           |  |                                  |

## TABLE OF CASES.

lix

|   | Page                         |  | Page  |
|---|------------------------------|--|---|
| Gardner v. Salvador, (Title,) 1 <i>M. &amp; R.</i> 116.; <i>Abb. Sh.</i> 14.  | 454                          | Gibson v. Senne, (Prize, 1 <i>Stark.</i> 119.; 5 <i>Taunt.</i> 433.  | 320   |
| —, Vernall v., (Damage,) 3 <i>Tyr. Rep. Exch.</i> 85.; 1 <i>C. &amp; M.</i> 21.   | 124. n. 126                  | Gienar v. Meyer, (Wages,) 2 <i>H. Black.</i> 603.  | 477   |
| Garrell v. Kensington, (Prize,) 8 <i>T. R.</i> 230.; 2 <i>Park on Jas.</i> 759.   | 321                          | Gillespie, Kerr v., (Evidence,) 7 <i>Beav.</i> 572.  | 155   |
| Garrett, Goddard v., (Bottomry,) 2 <i>Vern.</i> 254.  | 62, 63                       | —, Mestaer v., (Freight, Navigation Laws,) 11 <i>Ves.</i> 621. 625. 636. 642.  | 172. 250. 253                                     |
| Garson and others, Brownlow and others v., (Appals,) 4 <i>Moore.</i> 272.   | 26                           | Gilpin, Horn v., (Owners,) <i>Amb.</i> 255.  | 269   |
| Garves, Henshaw v., (Security for Costs,) 2 <i>H. Black.</i> 203.   | 411                          | Gipsev, (Witnesses,) 1 <i>W. Rob.</i> 370.   | 508   |
| Gaskell, Greenbough v., (Evidence,) 1 <i>Myln. &amp; C.</i> 98.   | 155                          | Girolamo, Guiranovich, (Damage, Licences, Owners, Pilots, Practice,) 3 <i>Hagg.</i> 169. 171. 186.   | 123. 129. 139. 194. 275. 276. 279. 280. 284. 303. |
| Gazelle, (Affidavits,) <i>Nov.</i> 1846.  | 9                            | Gladiator, Britten, (Damage, Practice,) 3 <i>Hagg.</i> 340.  | 139. 303  |
| —, Hurst, (Damage, Trinity Masters,) 1 <i>W. Rob.</i> 471.; 2 <i>W. Rob.</i> 279.; 8 <i>Jur.</i> 429.; 3 <i>Notes of Cases,</i> 75.; 10 <i>Jur.</i> 1065. | 127. 131. 134. 135. 136. 466 | Gladstone, Bolton v., (Evidence,) 5 <i>East,</i> 155.; 1 <i>Smith,</i> 372.; 2 <i>Taunt.</i> 185.  | 152   |
| Gehinurath Schack, Rathlow, (Practice,) 2 <i>Acton.</i> 58. n.  | 306                          | Glascott v. Lang, (Bottomry,) 3 <i>Myl. &amp; C.</i> 453.; 8 <i>Sim.</i> 358.; 2 <i>Jur.</i> 909.  | 53. 54. 69  |
| General Hamilton, Flinn, (Blockade,) 6 <i>C. Rob.</i> 61.   | 46                           | Glasgow Packet, Nicoll, (Evidence, Pleadings, Practice, Salvage,) 3 <i>Notes of Cases,</i> 107.; 2 <i>W. Rob.</i> 308.; 8 <i>Jur.</i> 675. | 151. 392. 305. 367. 368. 371. 372. 467            |
| —, Palmer, Thomas, (Salvage,) 2 <i>Hagg.</i> 393.   | 388. 397                     | Glass and Co., Tunes v., (Damage,) 4 <i>Mer.</i> 167.  | 125. n.   |
| —, Truscott, (Pilots, Salvage, Tenders,) 2 <i>Hagg.</i> 176. 180.   | 285. 386. 387. 447. 448      | Glover, Andrews v., (Title,) <i>Abb. Sh.</i> 23.   | 452, 453  |
| —, Steam Navigation Company v. Guillon, (Damage,) 11 <i>M. &amp; W.</i> 877.  | 123                          | — v. Black, (Bottomry,) 3 <i>Burr.</i> 1394.   | 63. n.  |
| — v. Tonkins, (The Friends) (Damage, Trinity Masters,) 4 <i>Moore.</i> 314. 321.  | 125. 135. 136. 138. 466      | —, King v., (Wages,) 2 <i>N. R.</i> 206.   | 471   |
| —, Walterstorf, Thaarup, (Captors, Prize,) 1 <i>C. Rob.</i> 328.  | 90. 332.                     | —, Siffkin v., (Licences,) 4 <i>Taunt.</i> 717.  | 201. 206  |
| Generous, (Navigation Laws,) 2 <i>Dodson.</i> 323. 327.   | 255. 259                     | Goddard v. Garrett, (Bottomry,) 2 <i>Vern.</i> 269.  | 62, 63  |
| Genesse's case, (Treaties,) 2 <i>Knapp.</i> 345.  | 465                          | Goede Hoop, Pieters, (Captors, Licences,) <i>Edw.</i> 327. 334.  | 86. 196. 202                                      |
| Genoa and its dependencies, Spezzia, Savona, and other towns, (Greenwich Hospital, Prize,) 2 <i>Dodson.</i> 444.  | 177. 310. 326                | —, Vanthuysen, (National Character,) 2 <i>Acton.</i> 32.   | 243   |
| — and Savona, (Joint-capture,) 2 <i>Dodson.</i> 88.   | 183. 187. 188                | Goldie v. Murray, (Security for Costs,) 2 <i>Curtis.</i> 797.  | 411   |
| Gent, Stonehouse v., (Masters,) 2 <i>Add. &amp; Ell. N. S.</i> 431. n.  | 224                          | Goldsmid, Johnston and Wright v., (Aliens,) <i>F. C.</i> 19.   | 13. n.  |
| George, (Damage, Owners,) 9 <i>Jur.</i> 282. 670.; 4 <i>Notes of Cases,</i> 161.  | 129. 137. 280                | Golubchick, Bernardos, (National Character, Wages,) 1 <i>W. Rob.</i> 143. 148. 153.  | 240. 478. 497                                     |
| —, (Mariners, Wages,) 1 <i>Summer's</i> (Amer.) <i>Rep.</i> 151.  | 215. n. 475. n. 480. n.      | Gomperts v. Best, (Contempt, Costs,) 1 <i>Y. &amp; C.</i> 619.   | 101. 115  |
| —, Banifer, (Wages,) 1 <i>Hagg.</i> 168. n.   | 490                          | Gondolier, Rhodes, (Wages,) 3 <i>Hagg.</i> 190.  | 479. 496  |
| —, Dunkin, (Prize,) 3 <i>C. Rob.</i> 212.   | 335                          | Gooch, Bond v., (Costs,) <i>Hull on Costs,</i> 465.  | 115   |
| —, Home, Young, (Mariners' Contracts,) 1 <i>Hagg.</i> 370. 375.   | 218. 219                     | —, Palmer v., (Material, Men,) 2 <i>Stark.</i> 428.  | 229   |
| — the Third, Scott, (Navigation Laws,) 1 <i>Dodson.</i> 311.  | 255                          | Goodall, Nicholl v., (Courts, Derelicts,) 10 <i>Ves.</i> 155.  | 117. 147  |
| Georgiana, Pitts, (Affidavits, Freight, Prize,) 1 <i>Dodson.</i> 399. 403.  | 9. 168. 324                  | Goodhart v. Lowe, (Stoppage in Transitu,) 2 <i>Jac. &amp; W.</i> 349.  | 446   |
| Gernon, Muller v., (Freight,) 3 <i>Taunt.</i> 394.  | 170                          | Good Intent, Humphries, (Salvage, military,) 1 <i>C. Rob.</i> 286.   | 401   |
| Gertruyda, De Vries, (Crown, Droits of Admiralty, Prize,) 2 <i>C. Rob.</i> 211. 219.  | 1. 120. 142. 145. 146. 328   | Goodlake, Helps, Hutchings, Wood, and others v., (Practice,) 2 <i>Curtis.</i> 97.  | 304   |
| Giacomo, Tarabochia, (Salvage,) 3 <i>Hagg.</i> 344.   | 376                          | Goodrich v. Jones, (Witnesses,) 2 <i>Curtis.</i> 630.  | 505. n. 509                                       |
| Gibbon v. Mender, (Freight,) 2 <i>B. &amp; A.</i> 17.   | 165                          | Goodson, Haly v., (Owners,) 2 <i>Mer.</i> 77.; 2 <i>Dodson.</i> 420.; <i>Abb. Sh.</i> 104.   | 270   |
| Gibbons, Menetone v., (Admiralty, Bottomry,) 3 <i>T. R.</i> 207. 257. 267. 269.; <i>Dougl.</i> 103.   | 4. 52. 56                    | Gordon and others, Storer v., (Freight,) 3 <i>M. &amp; S.</i> 308.; <i>Abb. Sh.</i> 469.   | 171   |
| Gibbs, Oxenham v., (Navigation Laws,) <i>Abb. Sh.</i> 54.   | 252                          | —, Schiffner v., (Licences,) 12 <i>East,</i> 295. 302.   | 197. 207  |
| Gibson v. Mair, (Prize,) 1 <i>Marsh.</i> 39.  | 320                          | —, Wilkinson v., (Allegations,) 2 <i>Add.</i> 171.   | 17  |

|  | Page                                  |  | Page                            |
|--|---------------------------------------|--|---------------------------------|
| Gore v. Gardiner, (Bottomry,) 3 Moore, 79.   | 57. 67                                | Grigg v. Scott, (Licences,) 4 Camp. 339; 1 Holt, 129.                            | 200                             |
| — v. Wynne, (Bottomry,) M. & M. 393.   | 60. n.                                | Grindall v. Grindall, (Paupers,) 4 Hagg. (Ecl.) 1.                               | 282                             |
| Gosnold, Shephard v., (Wreck,) Vaugh. 168.   | 511                                   | Grindell v. Grindell, (Pleadings,) 3 Hagg. (Ecl.) 259.                           | 294                             |
| Goss v. Withers, (Recapture,) 2 Burr. 683.   | 349                                   | Groning v. Crockatt, (Licences,) 3 Camp. 83.                                     | 201                             |
| Gould v. Gapper, (Courts, Statutes,) 5 East, 370; 1 Smith, 328.  | 117. 448                              | Gruel, (Prize,) Hay & Marriott, 147.   | 322                             |
| —, Grant v., (Admiralty, Prize, Prohibitions,) 2 H. Black. 69. 100.  | 4. 313. 344                           | Guardian, Beaton, (Possession,) 3 C. Rob. 93.                                    | 298                             |
| — and others, Smith v., (Bottomry, Evidence,) 4 Moore, 21. 28.; 6 Jur. 543.  | 51. 57. 65. 67. 69. 156               | Gubble, Experte, (Navigation Laws, Ships' Registers,) 17 Ves. 251.; 1 Rose, 177. | 250. 418                        |
| Governor Raffles, King, (Mariners, Practice, Salvage, Salvage, mixed,) 2 Dodson, 14.                               | 213. 301.                             | (Guiana,) Logan v. Burslem, (Appeals, Slave Trade,) 4 Moore, 292.; 7 Jur. 1.     | 27. n. 443                      |
| Graaff Bernstorff, Belmer, (Further Proof, National Character,) 3 C. Rob. 109. 115.                                | 174. 241                              | (—) Lopez v. Burslem, (Slave Trade,) 7 Jur. 1119.; 4 Moore, 300.                 | 443                             |
| Graces, (Practice, Salvage,) 2 W. Rob. 294.; 8 Jur. 501.   | 301. 370                              | Guild, Burgess v., (Aliens,) 17 F. C. 55.  | 14. n.                          |
| Grant v. Atkinson, (Practice,) 1 Lee, 161.   | 306                                   | Guillaume Tell, Sannier, (Joint Capture,) Edw. 6.                                | 190                             |
| —, Bayly v., (Wages) 1 Salk. 33.; 12 Mod. 444.; 1 Ld. Raym. 632.; Holt, 48.  | 473. 475. 498                         | Guillon, General Steam Navigation Company v., (Damage,) 11 M. & W. 877.          | 123                             |
| — v. Gould, (Admiralty, Prize, Prohibitions,) 2 H. Black. 69. 100.   | 4. 313. 344                           | Guimaraens v. Preston, (Slave Trade,) (19th of June,) 6 Jur. 879.; 4 Moore, 167. | 428. 445                        |
| —, Helly v., (Wages,) 1 T. R. 76.  | 479                                   | Gumbe's Case, (National Character,) 2 Knapp. 369.                                | 234                             |
| Gratitudine, Mazzola, (Average, Bottomry, Masters, Title,) 3 C. Rob. 240. 249. 263. 268. 364.; 2 Park on Ins. 898. | 33. 53. 71. 72. 73. 93. 223. 347. 452 | Gurney v. King, (Security for Costs,) 3 Dowl. P. C. 559.; 1 Har. & W. 203.       | 413                             |
| Graves v. Sawcer, (Owners,) Sir T. Raym. 15.; 1 Keb. 38.; 1 Lev. 29.; Abb. Sh. 100.                                | 268                                   | Gute Erwartung, Gay, (Blockade,) 6 C. Rob. 182.                                  | 44                              |
| Greathhead, White v., (Security for Costs,) 15 Ves. 2.   | 412                                   | Gute Gesellschaft, Michael Goltzenberg, (Contraband,) 4 C. Rob. 94.              | 104                             |
| Great Northern, (Wages,) 10 Jur. 104.; 4 Notes of Cases, 71.   | 474                                   | Gute Hoffnung, Steffins, (Licences,) 1 Dodson, 251.                              | 200                             |
| Greaves, Johnson v., (Bottomry, Licences, National Character,) 2 Taunt. 344. 364.                                  | 64. 206. 234                          | Guthrie, Leslie v., (Freight,) 1 Scott, 683.                                     | 165. n.                         |
| —, Moorsom v., (Freight,) 2 Cowp. 627.   | 168                                   |  |                                 |
| Greece (King of) v. Wright, (Security for Costs,) W. W. & D. 594.; 6 Dowl. 12.; 1 Jur. 944.                        | 413                                   | Haabet, (Freight,) 4 C. Rob. 302.  | 171                             |
| Green v. Charnock, (Security for Costs,) 2 Cox, 284.; 3 Bro. C. C. 371.; 1 Ves. jun. 396.                          | 412                                   | — Grierson, (Prize,) 6 C. Rob. 54.   | 334                             |
| —, Cooper v., (Practice,) 2 Add. 454.  | 301                                   | — Hohorst, (Freight,) 4 C. Rob. 54.  | 171                             |
| —, Pearce v., (Captors, Prize Agents,) 1 J. & W. 135.  | 88. 339                               | — Vette, (Contraband, Neutrals,) 2 C. Rob. 174. 182.                             | 107. 263                        |
| — v. Walker, (Admiralty,) 2 Lord Raym. 893.  | 6. n.                                 | Haase, Dreyn, (Prize, Salvage, military,) 1 C. Rob. 286.                         | 331. 405                        |
| Greenhill v. Greenhill, (Contempt, Practice,) 1 Curteis, 466.  | 101. 301                              | Haasum & East, (National Character,) 1 C. Rob. 14.                               | 239                             |
| Greenhough v. Gaskell, (Evidence,) 1 Myln. & C. 98.  | 155                                   | Hagedorn v. Allnutt, (Costs,) 3 Taunt. 379.                                      | 114                             |
| Greenleaf, Martin q.t. v., (Wages,) 2 Esp. 729.  | 501                                   | — v. Bazett, (Licences,) 2 M. & S. 100.  | 201                             |
| Greg v. Greg, (Appeals,) 2 Add. 284. 276.  | 23. 24                                | — v. Bell, (National Character,) 1 M. & S. 450.                                  | 234                             |
| Gregory and another, Mills and another v., (Wages,) Sayer, 127.  | 472                                   | — v. Reid, (Licences,) 1 M. & S. 567.; 3 Camp. 377.                              | 198                             |
| Gregory, Jurado v., (Admiralty,) 1 Lev. 267.; 1 Vent. 32.; 1 Sid. 418.   | 2                                     | Hague, Peto v., (Evidence,) 3 Esp. 134.; 1 Smith, 417.                           | 154                             |
| Grey, Lutwidge v., (Freight,) Dom. Proc. Abb. Sh. 438. 463.  | 166                                   | Haidee, (Practice, Proctors, Salvage,) 1 Notes of Cases, 599.                    | 306. n. 342. n. 365. n. 378. n. |
| Grierson v. Eyre, (Courts,) 9 Ves. jun. 347.   | 117                                   | Halford v. Halford, (Pleadings,) 3 Phill. 99.                                    | 292                             |
| Grievens, Chandler v., (Wages,) 2 H. Black. 606. n.; 6 T. R. 325. n.; Abb. Sh. 442.; Smith's Merc. Law, 397.       | 480                                   | Halked, Vanharthals v., (Licences,) 1 East, 487. n.; 1 Park on Ins. 511.         | 195. 197                        |
| Griffin v. Blandford, (Customs and Usages,) Cowp. 62.  | 121                                   | Halkett Experte, (Material Men,) 3 Ves. & B. 135.                                | 227                             |
| Griffith v. Reed & Harris, (Costs,) 1 Hagg. (Ecl.) 210.  | 112                                   | Hall, Campbell v., (Crown,) Lofft. 655.; Cow. 204.                               | 119                             |
|  |                                       | — Carter v., (Wages,) 2 Stark. 861. Abb. Sh. 617.                                | 499                             |
|  |                                       | — Holland v., (Contraband,) 1 B. & A. 53.  | 110                             |
|  |                                       | — Maria v., (Aliens,) 1 Taunt. 33. n.  | 14                              |

## H.

## TABLE OF CASES.

lxi

|  | Page   |   | Page                      |
|--|--|---|---------------------------|
| Hall, Radcliffe v., (Costs,) 3 <i>Dowl. P. C.</i> 802.; 5 <i>Tyr.</i> 770.   | 113  | Harrison, Experte, (Liens, Owners,) 2 <i>Rose</i> , 76.   | 211. 269                  |
| — Stewart v., (Agents,) 2 <i>Dowl.</i> 29.; 1 <i>Bel.</i> 325. n. 5.   | 11   | — v. Sparrow, (Appeals,) 3 <i>Curtis</i> , 1.   | 24                        |
| — Williams v., (Evidence,) 1 <i>Curtis</i> , 606.  | 157  | Hart v. Middleton, (Limitations,) 2 <i>Carr &amp; K.</i> 19.  | 213                       |
| — Yeates v., (Wages,) 1 <i>T. R.</i> 73. 79.   | 479. 481   | Hart, Twentyman v., (Masters, Mortgagees,) 1 <i>Stark</i> 366.  | 224. 233                  |
| Hallet v. Bousfield, (Liens,) 18 <i>Ves.</i> 187.  | 211  | Hartford v. Jones, (Salvage,) 1 <i>Ld. Raym.</i> 393.   | 368. n.                   |
| Hallet v. King of Spain, (Foreigners,) 1 <i>Dow. N. S.</i> 169.; 2 <i>Bl. N. S.</i> 31.; 1 <i>Clarks &amp; Fin.</i> 333.                       | 163  | Hartley, Roberts v., (Prize,) 1 <i>Dougl.</i> 311.  | 331                       |
| Haly v. Goodson, (Owners,) 2 <i>Mer.</i> 77.; 2 <i>Dod.</i> 420.; <i>Abb. Sh.</i> 104.   | 270  | Hartwell, Turtle v., (Prize,) 6 <i>T. R.</i> 426.   | 332                       |
| Hamilton v. Dutch East India Company, (Evidence,) 8 <i>Brot. P. C.</i> 264.  | 152  | Harvey, (Salvage,) 4 <i>Monthly Law Mag.</i> 153.   | 380. n.                   |
| —, Robertson v., (Owners, Restitution,) 14 <i>East</i> , 522.  | 268. 352   | —, v. Cooke, (Flag Share,) 6 <i>East</i> , 220.; 2 <i>Smith</i> , 341.  | 160                       |
| Hammond v. Blake, (Pilots,) 10 <i>B. &amp; C.</i> 424.; 5 <i>M. &amp; R.</i> 261.  | 284  | — v. Jacob, (Security for Costs,) 1 <i>B. &amp; A.</i> 159.   | 414                       |
| — v. Webb, (Statutes,) 10 <i>Mod.</i> 282.   | 447  | —, Peach, (Evidence, Mariners' Contracts, Wages, Witnesses,) 2 <i>Hagg.</i> 79. 83. 83. n.  | 150. 220. 478. 505. n.    |
| Handyside v. Wilson, (Damage,) 3 <i>Cur. &amp; P.</i> 528.   | 130  | Hassack v. Masson, (Ship's Register,) 4 <i>Moore</i> , 361.   | 419                       |
| Hand et al. v. Schooner Elvira, (Salvage,) <i>Gilpin's (Amer.) Rep.</i> 60.  | 386. n.  | Hassan, Ciragno v., (Security for Costs,) 6 <i>Taunt.</i> 20.; 1 <i>Marsh.</i> 421.   | 413. 414                  |
| Handley and Jones v. Edwards, (Appeals, Witnesses,) 2 <i>Jur.</i> 677. 722. 743.; 1 <i>Curtis</i> , 754.; 8 <i>Jur.</i> 678.                   | 23. 24. 25. 28. 505. n.  | Hastings, Fairlie v., (Evidence,) 18 <i>Ves. jun.</i> 123.  | 154                       |
| Happy Return, Woolcock, (Agents, Salvage,) 2 <i>Hagg.</i> 198. 207.  | 11. 351. 361. 398  | Havelock v. Rockwood, (Prize, Ransom, Title,) 8 <i>T. R.</i> 268. 277.  | 316. 347. 454. 455.       |
| Harber v. Brotherstone, (Bottomry,) 4 <i>Camp.</i> 254.  | 69   | Haven, Bronde et al., re, (Wages,) <i>Gilpin's (Amer.)</i> 592.   | 497. n.                   |
| Hardacre, Paterson v., (Title,) 4 <i>Taunt.</i> 115.   | 456  | Havileck, Thompson v., (Masters, Wages,) 1 <i>Camp.</i> 527.  | 222. 479                  |
| Harding, Baddeley v., (Security for Costs,) 6 <i>Mad.</i> 214.   | 414  | Hawkins, Blackquiere v., (Admiralty, Bottomry,) 1 <i>Dougl.</i> 378.  | 6. 53                     |
| Hardy, Roberts v., (Aliens, National Character,) 3 <i>M. &amp; S.</i> 533.; 3 <i>P. &amp; P.</i> 113.; 1 <i>Camp.</i> 482.; 2 <i>N. R.</i> 97. | 13. 236  | Hay v. Le Neve, (Damage,) 2 <i>Shaw's Scotch Ap.</i> 395.; 1 <i>Bel.</i> 581. n.; 3 <i>Abb. Sh.</i> 230.                                    | 125. 125. n.              |
| Hare, Bertoddy, (Practice, Prize Agents,) 1 <i>Dodson</i> , 471. 478.  | 307. 336   | Haylay, Badnall v., (Security for Costs,) 4 <i>Mee. &amp; W.</i> 535.; 7 <i>Dowl.</i> 19.; 1 <i>Horn. &amp; H.</i> 359.; 2 <i>Jur.</i> 992. | 414                       |
| — Chew, (Blockade,) 1 <i>Acton</i> , 252.  | 40   | Haylett, Rice v., (Mariner's Contracts,) 3 <i>Cur. &amp; P.</i> 534.  | 218                       |
| Harling v. Brook, (Wages,) <i>Comb.</i> 255.   | 473  | Hayman and others v. Moulton and others, (Title,) 5 <i>Exp. N. P. C.</i> 54. 65.; <i>Abb. Sh.</i> 20.                                       | 453. 454                  |
| Harman, Dowling v., (Security for Costs,) 8 <i>Dowl.</i> 165.; 4 <i>Jur.</i> 43.; 6 <i>M. &amp; W.</i> 131.                                    | 411. 412   | Heart of Oak, Crawford, (Bottomry,) 1 <i>W. Rob.</i> 204. 215.; 1 <i>Notes of Cases</i> , 114.  | 66. 68. 69. 78            |
| — v. Kingston, (Aliens,) 3 <i>Camp.</i> 152.   | 12. 14   | Heath v. Heath, (Answers,) 2 <i>Lee</i> , 562.  | 21                        |
| — v. Vanhatton, (Bottomry,) 2 <i>Vern.</i> 717.  | 63   | — v. Hubbard, (Navigation Laws,) 4 <i>East</i> , 110.; 4 <i>Exp. N. P. C.</i> 205.  | 252                       |
| Harmonie, De Boer, (Joint Capture,) 3 <i>C. Rob.</i> 318.  | 190  | Heatheote, Brown v., (Title,) 1 <i>Atk.</i> 160.  | 450                       |
| —, Prahm, (Appearance, Material Men,) 1 <i>W. Rob.</i> 179.  | 29. 227  | —, Oliver Tuke v., (Answers,) 2 <i>Add.</i> 35.   | 20                        |
| Harmony, Bool, (National Character,) 2 <i>C. Rob.</i> 322.   | 235. 236   | Heather, Wilson v., (Liens, Mortgagees,) 5 <i>Taunt.</i> 642.   | 211. 231. 231. n.         |
| —, Coop, in re., (Prize,) <i>C. C.</i> 325.  | 312  | Heathorn v. Darling, (Eliza,) (Bottomry, Salvage,) 1 <i>E. F. Moore</i> , 5.  | 58. 368                   |
| —, Norman, (Practice, Prize,) 2 <i>Dodson</i> , 78.  | 306. 312. 317  | Hebden, Oriston v., (Owners,) 1 <i>Wils.</i> 101.   | 269                       |
| —, Paoli, (Practice,) 2 <i>Acton</i> , 60. n.  | 306  | Hebe, Cole, (Salvage,) 2 <i>W. Rob.</i> 246.  | 387                       |
| Harregaard, Peterson, (Appearance, Broker, Prize Agents,) 1 <i>Hagg.</i> 23.   | 30. 81. 335. 339   | —, Hampton, (Bottomry, Pleadings,) 2 <i>W. Rob.</i> 146. 150.; 10 <i>Jur.</i> 231.; 4 <i>Notes of Cases</i> , 361.                          | 368. 60. 64. 68. 292. 294 |
| Harriet Bulmer, (Bail, Damage,) 1 <i>W. Rob.</i> 137.  | 182. 192. 197. 204.; 6 <i>Jur.</i> 197.; 1 <i>Notes of Cases</i> , 204. 327. | 3. 34. 35. 131  | 203                       |
| Harriott Sourrice, (Admiralty, Salvage,) 1 <i>W. Rob.</i> 429. 439.  | 7. 369   | —, Freeman, (Salvage,) 3 <i>Hagg.</i> 90. 95.   | 374. 376. 380. 388        |
| Harris, Howard v., (Interest,) 1 <i>Vern.</i> 194.   | 181  | —, Smith, (Trade with the Enemy,) 4 <i>C. Rob.</i> <i>App. A.</i> 14. n.  | 459                       |
| — v. Ive, (Wages,) 1 <i>Har. &amp; W.</i> 238.   | 485  | Hedges, De Grave v., (Owners,) 2 <i>Ld. Raym.</i> 1285.; <i>Abb. Sh.</i> 102.   | 269                       |
| — v. Watson, (Wages,) <i>Peake N. P. C.</i> 72.  | 479  |   |                           |

|  | Page | age |
|--|------|-----|
| Hedges, Ridden v., (Admiralty,) 1 <i>Ld. Raym.</i> 446.;<br>1 <i>Vent.</i> 1.; <i>Sti.</i> 171.; 6 <i>Vin. Abr.</i> 586.; 12<br><i>Mod.</i> 246. 6   |      |     |
| Heightman, Hulle v., (Wages,) 2 <i>East</i> , 145.; 4<br><i>Esp.</i> 7.; 5 <i>Abb. Sh.</i> 482. 486  |      |     |
| Helen, Cornish, (Pirates,) 1 <i>Hagg.</i> 142. 288, 289  |      |     |
| —, Hislop, (Pirates, Title,) 4 <i>C. Rob.</i> 3.<br>290. 455   |      |     |
| —, Marshall, (Salvage, military,) 4 <i>C. Rob.</i> 224.<br>228. 401. 404   |      |     |
| Helena, (Captors,) 2 <i>Wheaton's</i> (Amer.) <i>Rep.</i> 345.<br>85. n.   |      |     |
| Helene, Breckwoltdt, (Salvage,) 3 <i>Hagg.</i> 430. n.<br>382. 392   |      |     |
| Hellier, Brotherton v., (Interveners,) 1 <i>Lee</i> , 599.<br>182  |      |     |
| —, Winford, (Lady Cookes,) v., (Witnesses,) 1<br><i>Lee</i> , 274. 508   |      |     |
| Helly v. Grant, (Wages,) 1 <i>T. R.</i> 76. 479  |      |     |
| Helme v. Smith, (Navigation Laws, Owners,) 7<br><i>Bing.</i> 702. 704.; 5 <i>M. &amp; P.</i> 744. 251. 268   |      |     |
| Henderson, Rendell & Co. v. Lothian, (Evidence,)<br>12 <i>F. C.</i> 428. 434. n.; <i>Mor. No. 4. App. Assur-</i><br><i>ance.</i> 152. n.             |      |     |
| Hendrick and Alida, (Prize,) <i>Hay &amp; Marriott</i> , 96.<br>106. 317. 321  |      |     |
| Hendrick, Hansen, (Licences,) 1 <i>Acton</i> , 392.<br>196, 197  |      |     |
| Henley and Dudderidge v. Morrison, (Appeals,<br>Practice, Wages,) 2 <i>Hagg.</i> (Eccl.) <i>sup.</i> 147.<br>23. 305. 502                            |      |     |
| Henrick and Maria, (Blockade,) 1 <i>C. Rob.</i> 148.<br>37. 40. 42, 43   |      |     |
| — and Maria, Baar, (Prize,) 4 <i>C. Rob.</i> 43. 57.;<br>6 <i>C. Rob.</i> 139. 316. 334  |      |     |
| Henrietta, Dormanski, (Salvage,) 3 <i>Hagg.</i> 345. n.<br>376   |      |     |
| —, Forbiornsen, (Licences,) <i>Edw.</i> 363. 204   |      |     |
| —, Jurgensen, (Licences,) 1 <i>Dodson</i> , 173.<br>203, 204, 205  |      |     |
| Henry Ewbank and Cargo, (Salvage, Witnesses,)<br>1 <i>Sumner's</i> (Amer.) <i>Rep.</i> 400. 366. n. 390. n.<br>394. n. 399. n. 505. n.               |      |     |
| —, Hannay, (Salvage, military,) <i>Edw.</i> 192. 404   |      |     |
| — v. John and Alice, (Bottomry,) 1 <i>Wash-</i><br><i>ington's</i> (Amer.) <i>Rep.</i> 293. 59. n.   |      |     |
| — of Philadelphia, Palesti, (Salvage,) 1 <i>Hagg.</i><br>264. 388. 399   |      |     |
| — v. Stainforth, (Licences,) 4 <i>Camp.</i> 270. 201   |      |     |
| Henshaw v. Garves, (Security for Costs,) 2 <i>H. Black.</i><br>303. 411  |      |     |
| Hensley, E. I. Company v., (Agents,) 1 <i>Esp.</i> 112.<br>10  |      |     |
| Herbert, Coutts v., (Owners,) 3 <i>Stark.</i> 12. 277  |      |     |
| — v. Herbert, (Evidence, Witnesses,) 2 <i>Hagg.</i><br>(Cona.) 266.; 3 <i>Phil.</i> 36.; 2 <i>Phil.</i> 430. 157.<br>181. 507                        |      |     |
| Hercules, Chitty, (Capture, Navigation Laws, Pi-<br>rates, Practice,) 2 <i>Dodson</i> , 353. 363. 369. 373.<br>93. 258. 261. 288, 289. 302           |      |     |
| Herman, Parlo, (Joint Capture,) 1 <i>Acton</i> , 229.; 3<br><i>C. Rob.</i> 8. 187. 191   |      |     |
| —, Schroeder, (National Character,) 4 <i>C. Rob.</i><br>228. 239   |      |     |
| Hernaman v. Bawden, (Wages,) 3 <i>Burr.</i> 1844.<br>481. 485  |      |     |
| Hero, Howard, (Bottomry,) 2 <i>Dodson</i> , 139. 142.<br>147. 51. 61. 64. 67. 69.  |      |     |
| Hersey, Grimwood, (Bottomry,) 3 <i>Hagg.</i> 404.<br>57. 67, 68. 74  |      |     |
| (—), Gore v. Gardiner, (Bottomry,) 3<br><i>Hagg.</i> 404. 67   |      |     |
| Herstelder, Dekoe, (National Character, Practice,<br>Prize, Witnesses,) 1 <i>C. Rob.</i> 113. 118.<br>244, 245. 266. 306. 316. n. 318. 324. 334. 503 |      |     |
| Heseltine, Bromley v., (National Character,) 1 <i>Camp.</i><br>75. 235   |      |     |
| — and Burgh, Waller and Smyth v., (Prac-<br>tice,) 1 <i>Phil.</i> 173. 305   |      |     |
| Hesse, Whish and Woollatt v., (Allegations,) 3<br><i>Hagg.</i> (Eccl.) 680. 18   |      |     |
| Hibbert v. Rolleston, (Navigation Laws,) 2 <i>Bro.</i><br><i>C. C.</i> 571.; 3 <i>T. R.</i> 406. 252   |      |     |
| Highlander, Rendles, (Bonds, Mortgagees,) 2 <i>W.</i><br><i>Rob.</i> 109. 49. 232  |      |     |
| Hill, Blewitt v., (Contraband,) 13 <i>East</i> , 13. 109   |      |     |
| — v. Bulkeley, (Evidence,) 1 <i>Phil.</i> 280. 156   |      |     |
| — Exp., (Freight,) 1 <i>Mad.</i> 61. 171   |      |     |
| — v. M'Iver, (Security for Costs,) 1 <i>Tidd's Prac.</i><br>579. 413   |      |     |
| —, Medeiros v., (Blockade,) 8 <i>Bing.</i> 231.; <i>Abb.</i><br><i>Sh.</i> 601. 41. 43   |      |     |
| — v. Reardon, (Courts, Security for Costs,) 2 <i>S.</i><br><i>S.</i> 431.; 6 <i>Mad.</i> 46. 116. 413  |      |     |
| Hillary and Son, Wake v., (Prize,) 12 <i>F. C.</i> 556.;<br><i>Mor.</i> , No. 1., <i>App. Prize.</i> 315. n.   |      |     |
| Hilliam v. Walker, (Security for Costs,) 1 <i>Hagg.</i><br>(Eccl.) 72. 412   |      |     |
| Hillier v. Milligan, (Evidence, Proctors,) 1 <i>Lee</i> ,<br>532. 154. 342   |      |     |
| Hillyard v. Mount, (Wages,) 3 <i>Car. &amp; P.</i> , 93. 486   |      |     |
| Hiram, (Licences,) 8 <i>Cranch's</i> (Amer.) <i>Rep.</i> 444.<br>207. n.   |      |     |
| —, (Licences,) 1 <i>Wheaton's</i> (Amer.) <i>Rep.</i> 440.<br>207. n.  |      |     |
| —, Still, (Freight,) 3 <i>C. Rob.</i> 180. 66  |      |     |
| Hitchcock, Hoby v., (Security for Costs,) 5 <i>Ves.</i><br><i>jun.</i> 699. 412  |      |     |
| Hoare v. Clement, (Material Men,) 2 <i>Show.</i> 338.;<br><i>Abb. Sh.</i> 143. 226   |      |     |
| Hobart et al v. Drogan et al., (Salvage,) 10 <i>Peter's</i><br>(Amer.) <i>Rep.</i> 108. 360. n. 386. n.  |      |     |
| Hoby v. Hitchcock, (Security for Costs,) 5 <i>Ves.</i><br><i>jun.</i> 699. 412   |      |     |
| Hodgson, Dalgleish v., (Blockade, Evidence,) 2 <i>M.</i><br>& <i>P.</i> 407.; 7 <i>Bing.</i> 495. 43. 152  |      |     |
| —, Inman v., (Evidence,) 1 <i>F. &amp; J.</i> , 28. 151  |      |     |
| —, (in error,) Simmonds v., (Bottomry,) 3<br><i>B. &amp; Ad.</i> 50.; 3 <i>M. &amp; P.</i> 385.; 6 <i>Bing.</i> 114. 60. 64                          |      |     |
| Hoffnung, Berens, (Further Proof, Licences, Title,)<br>2 <i>C. Rob.</i> 162. 174. 203. 205. 209. 454   |      |     |
| —, Hardrath, (Average, Prize,) 6 <i>C. Rob.</i><br>383. 386. 32. 94. 310   |      |     |
| —, Raak, (Freight,) 6 <i>C. Rob.</i> 231. 167  |      |     |
| —, Schmidt, (Blockade,) 6 <i>C. Rob.</i> 116. 99, 40   |      |     |
| Hoghton, Brady, (Mariners, Mariners' Contracts,)<br>3 <i>Hagg.</i> 100. 214. 217, 218  |      |     |
| Hohter, Sandys v., (Security for Costs,) 6 <i>Dowl.</i><br>274.; 1 <i>W. N. &amp; H.</i> 57. 410   |      |     |
| Holland v. Hall, (Contraband,) 1 <i>B. &amp; A.</i> 53. 110  |      |     |
| Hollings, Wargent v., (Appeals,) 4 <i>Hagg.</i> (Eccl.)<br>246. 24   |      |     |
| Holmes v. Rainier, (Flag Share,) 8 <i>East</i> , 502. 159, 160   |      |     |
| Holstein, Jobs, (Freight,) <i>Edw.</i> 72. 167, 168  |      |     |

## lxiii

|   |                         |      |
|---|-------------------------|------|
| Home, (in error,) Camden (Lord) v., (Captors, Prize, Prohibition,) 6 <i>Bro.</i> 243.; 2 <i>H. Black.</i> 533.; 4 <i>T. R.</i> 382. 397.; 1 <i>H. Black.</i> 475. | 85. 312. 329. 345       | Page |
| Homfray, Courtail v., (Appeals,) 2 <i>Hagg.</i> (Eccl.) 3.  | 27                      |      |
| Hook a. Moreton, (Wages,) <i>Ld. Raym.</i> 398.   | 472. 475                |      |
| Hoop, Cornelis, (Trade with the Enemy,) 1 <i>C. Rob.</i> 196.   | 457                     |      |
| —, De Vries, (Further Proof, Prize,) 1 <i>C. Rob.</i> 129.  | 176. 318                |      |
| —, Morel, (Marshall,) 4 <i>C. Rob.</i> 145.   | 221                     |      |
| Hooper and Harris, Tagart and Bakewell v., (Practice,) 1 <i>Curtis</i> , 289. n.  | 303                     |      |
| Hope, (Salvage, military,) <i>Hay &amp; Marriott</i> , 216.   | 401                     |      |
| —, (Salvage,) 1 <i>W. Rob.</i> 265.   | 357                     |      |
| —, Dobell, (Prize,) 1 <i>Acton</i> , 43.  | 318                     |      |
| —, Hart, (Damage, Tenders,) 2 <i>W. Rob.</i> 8.   | 137. 449                |      |
| —, Hepburn, (Damage, Owners,) 1 <i>W. Rob.</i> 154.   | 157.                    |      |
| —, Horncastle, (Salvage,) 3 <i>C. Rob.</i> 215.   | 356                     |      |
| —, Jones, (Contraband,) 6 <i>C. Rob.</i> 432. 462.  | 105. 106. 109           |      |
| —, Norman, (Salvage,) 3 <i>Hagg.</i> 423.   | 384. 391. 398           |      |
| — and others, (Aliens,) 1 <i>Dodson</i> , 226. 229.   | 15. 16. 466             |      |
| Hopkins, Morgan v., (Answers,) 2 <i>Phil.</i> 582.  | 21                      |      |
| Hoppet, (Contraband, Further Proof,) <i>Hay &amp; Marriott</i> , 217.   | 107. 174                |      |
| —, Halberg, (Licences,) <i>Edw.</i> 369.  | 204                     |      |
| Horatio, Nelson, (Prize,) 6 <i>C. Rob.</i> 390.   | 323                     |      |
| Horn v. Gilpin, (Owners,) <i>Amb.</i> 255.  | 269                     |      |
| Horseman, Newland, (Admiralty,) 1 <i>Vern.</i> 21.  | 2                       |      |
| Horton, Langton v., (Owners,) 6 <i>Jur.</i> 910.; 1 <i>Hare</i> , 549.; <i>Abb. Sh.</i> 401.  | 275                     |      |
| Hosier, Franklin v., (Material Men,) 4 <i>B. &amp; A.</i> 341.  | 226                     |      |
| Hoskins v. Pickersgill, (Owners,) 1 <i>Park on Ins.</i> 97.; 2 <i>Marsh on Ins.</i> 735.; 3 <i>Dougl.</i> 223.  | 275. n.                 |      |
| Houghton Exp. (Navigation Laws, Ships' Register,) 17 <i>Ves.</i> 251.; 1 <i>Rose</i> , 177.   | 250. 418                |      |
| Howard, (Salvage,) 3 <i>Hagg.</i> 256. n. (a.)  | 393                     |      |
| —, Bagwell, (Assignees of,) v., (Stoppage in Transitu,) 1 <i>H. Black.</i> 366. n.  | 446                     |      |
| — v. Canfield, (Witnesses,) 5 <i>Dowl. P. C.</i> 417.   | 509                     |      |
| — v. Harris, (Interest,) 1 <i>Vern.</i> 194.  | 181                     |      |
| Howden, Sword v., (Bottomry,) 4 <i>S. 757.</i>  | 69. n.                  |      |
| Howe v. Napier, (Wages,) 4 <i>Burr.</i> 1944.   | 473                     |      |
| Hubbard, Bloxam v., (Navigation Laws,) 5 <i>East</i> , 407.; <i>Smith</i> , 487.  | 252                     |      |
| —, Heath v., (Navigation Laws,) 4 <i>East</i> , 110.; 4 <i>Exp. N. P. C.</i> 205.   | 252                     |      |
| — v. Johnstone, (Navigation Laws,) 3 <i>Tamst.</i> 177.   | 250. 252                |      |
| Hudson v. Beauchamp, (Witnesses,) 1 <i>Add.</i> 352.  | 508                     |      |
| Huggett v. Montgomery, (Damage, Royal Navy,) 2 <i>N. R.</i> 446.  | 138. 353                |      |
| Hughes v. Cornelius, (Admiralty, Prize, Title,) <i>Carth.</i> 32.; <i>Skin.</i> 59.; 6 <i>Vin. Abr.</i> 519. 534.; 2 <i>Show.</i> 232.; <i>Ld. Raym.</i> 473.     | 2. 315. 451             |      |
| — v. Turner, (Appeals,) 4 <i>Hagg.</i> (Eccl.) 47.  | 27                      |      |
| Huldah, Mills, (Captors, Limitations,) 3 <i>C. Rob.</i> 235.  | 90. 212. 213            |      |
| Hulle v. Heightman, (Wages,) 2 <i>East</i> , 145.; 4 <i>Exp. 7.</i> ; 5 <i>Abb. Sh.</i> 462.  | 486                     | Page |
| Hullerson v. Staples, (Costs,) 2 <i>Dougl.</i> 438.   | 114                     |      |
| Hullman v. Scott, (Licences,) 3 <i>M. &amp; S.</i> 337.   | 199                     |      |
| — v. Whitmore, (Licences,) 3 <i>M. &amp; S.</i> 337.  | 199                     |      |
| Humble, Rubichon v., (Navigation Laws,) 1 <i>Dow.</i> 191.  | 255. n.                 |      |
| Huntcliffe, Cole, (Bottomry, Evidence) 2 <i>Hagg.</i> 283. 288.   | 76. 15                  |      |
| Hunter & Co., v. M'Cowan and others, (Owners,) 1 <i>Bligh</i> , 573.; <i>Abb. Sh.</i> 401.  | 273. n.                 |      |
| — v. Prinsep and others, (Title,) 10 <i>East</i> , 378.   | 452                     |      |
| — v. Parker, (Navigation Laws, Title,) 7 <i>M. &amp; W.</i> 322.; <i>Abb. Sh.</i> 9. 23.  | 252. 452, 453           |      |
| —, Rogers, (Further Proof, Prize,) 1 <i>Dodson</i> , 480.   | 176. 314. 315. 322      |      |
| Huntingfield, (Lord,) Dolder v., (War,) 11 <i>Ves. jun.</i> 292.  | 503                     |      |
| Huntress, Stinson, (Evidence, Owners, Salvage,) 6 <i>C. Rob.</i> 104. 111.  | 157. 266. 405. 406      |      |
| Hurley, Corset v., (Bottomry,) <i>Comb.</i> 138.; <i>Rep. temp. Holt</i> , 48.  | 52 n.                   |      |
| Hurtige, Hane, Dahl, (Blockade,) 2 <i>C. Rob.</i> 124. 128.; 3 <i>C. Rob.</i> 324. 328.   | 41. 44. 48. 308         |      |
| Hussie v. Christie, (Bottomry, Masters,) 13 <i>Ves. jun.</i> 594. 599.; 9 <i>East</i> , 426.; 3 <i>Swanston</i> , 139.  | 71. 224. 227            |      |
| Hutchins v. Player, (Flag Share,) <i>Bannister</i> , 299.   | 306.                    |      |
| Hutchinson v. Coombs, (Mariners, Wages,) 7 (Amer.) <i>Jur.</i> 37.  | 215. n. 216. n. 483. n. |      |
| —, Wright v., (Aliens,) 15 <i>F. C.</i> 435. n.   | 12. n.                  |      |
| I.  |                         |      |
| Idle v. Royal Exchange Insurance Company, (Title,) 3 <i>Moore</i> , 115.; 8 <i>Tamst.</i> 755.; 3 <i>B. &amp; B.</i> 151.; <i>Abb. Sh.</i> 11.                    | 453                     |      |
| Imina Bauman, Vroom, (Contraband,) 3 <i>C. Rob.</i> 167.  | 107. 108                |      |
| Immanuel, Eysenberg, (Contraband, Trade with the Enemy,) 2 <i>C. Rob.</i> 37. 186. 196. 205.  | 108. 459, 460           |      |
| Independence (Ship), Snell et al. v., (Wages,) <i>Gilpin's</i> (Amer.) <i>Rep.</i> 89. 140.   | 494. n. 496. n.         |      |
| India, (Salvage,) 1 <i>W. Rob.</i> 406. 410.  | 367, 368. 397           |      |
| Indian Chief, Skynner, (National Character,) 3 <i>C. Rob.</i> 12. 22.   | 235. 238, 239. 242.     |      |
| Industrie, Rolff, (Unlivery and Appraisement,) 5 <i>C. Rob.</i> 88.   | 468                     |      |
| Industry, Capiter, (Appeals,) 2 <i>Hagg.</i> 73.  | 26                      |      |
| —, Davis, (Salvage,) 3 <i>Hagg.</i> 304.  | 374. 387                |      |
| Ingham, Laing v., (Appeals,) 3 <i>Moore</i> , 26.   | 24                      |      |
| Ingledeu v. Foster, (Bottomry,) 4 <i>Vin. Abr.</i> 281.   | 54                      |      |
| Ingleton, Wiggins v., (Wages,) 2 <i>Ld. Raym.</i> 1211.   | 480 n.                  |      |
| Inglis, Kensington v., (Aliens, Licences,) 8 <i>East</i> , 273.   | 14. 196. 209            |      |
| Ingram, Lucey v., (Owners,) 2 <i>W. Rob.</i> 184.; <i>Abb. Sh.</i> 206.   | 278                     |      |
| — v. Wyatt, (Examiners, Fraud, Witnesses,) 1 <i>Hagg.</i> (Eccl.) 94. 100. 103. 384.  | 157.                    |      |
|   | 163. 508. 509.          |      |





# TABLE OF CASES.

lxv

|  |   |   |   |
|--|---|---|---|
| John and Thomas, Baxter, (Salvage, Tenders,) 1   | Page 389. 449   | Jonge Juffers, Reestma, (Contraband, Prize,) <i>Hay &amp; Marriott</i> , 272.               | Page 107. 318   |
| <i>Hagg</i> , 157. n.  |   | —, Lambert, (Salvage military,) 5 <i>C. Rob.</i>  | 54.   |
| Johns v. Symons, (Bottomry, Masters,) 2 <i>A. &amp; E.</i>                                     | 58. 224   | —, Margaretha, Klansen, (Contraband,) 1 <i>C. Rob.</i>                                      | 189. 193.   |
| (N. S.) 425. ; 2 <i>Park on Ins.</i> 878.  |   | —, Nicolaas, Parma, (Salvage,) 1 <i>Hagg</i> .  | 301.  |
| Johnson v. Broderick, (Wages,) 4 <i>East</i> , 566. ;  | 481   | 209.  | 374. 396. n.  |
| 1 <i>Smith</i> , 153. ; <i>Abb. Sh.</i> 643.   |   | —, Petronella, Kena, (Blockade,) 2 <i>C. Rob.</i>   | 131.  |
| — v. Greaves, (Bottomry, Licences, National Character,) 2 <i>Tasat</i> . 344. 364.             | 64. 206. 234  | —, Pieter, Musterdt, (Blockade, National Character, Trade with the Enemy,) 4 <i>C. Rob.</i> | 79. 83.   |
| — v. Llewellyn, (Wages,) 1 <i>Tasat</i> . 386. ; 6   | 501   | 42. 102. 245. 457   |   |
| <i>Exp.</i> 101.   |   | —, Thomas, (Trade with the Enemy,) 3 <i>C. Rob.</i>   | 232. n.   |
| — v. Machielme, (Wages,) 3 <i>Camp</i> . 44.   | 477   | —, Tobias, Hilken, (Contraband,) 1 <i>C. Rob.</i>   | 329.  |
| — v. Shepney, (Admiralty,) 6 <i>Mod.</i> 79. ; 14  | 3   | 104. 109. 110   |   |
| <i>Fin. Abr.</i> 300.  |   | Jopling, Mc Donald v., (Wages,) 4 <i>Mer. &amp; W.</i>                                      | 285. ;  |
| — v. Shippen, (Bottomry, Title,) 2 <i>Ld. Raym.</i>  | 382. ; <i>Salk.</i> 35. ; 6 <i>Mod.</i> 99. ; 14 <i>Fin. Abr.</i> | 1 <i>H. &amp; H.</i> 271. ; 2 <i>Jur.</i> 790. ; <i>Abb. Sh.</i>                            | 645.  |
| 300. ; <i>Rep. temp. Holt</i> , 48. ; <i>Abb. Sh.</i> 7.                                       | 52. n. 61. 72. 450. 452   | Joseph Harvey, Paddock, (Salvage,) 1 <i>C. Rob.</i>   | 306.  |
| Johnson v. Sutton, (in error,) (Bail,) 1 <i>T. R.</i>  | 493.  | — v. Knor, (Cargo,) 3 <i>Camp</i> . 332.  | 93. n.  |
| 784. ; 1 <i>Bro.</i> 76.   | 35  | —, Naylor v., (Security for Costs,) 10 <i>Moore</i> .                                       | 522.  |
| Johnston's case, (Treaties,) 2 <i>Knapp</i> . 337.   | 465   | Josephine, Chilton, (Licences, Prize,) 1 <i>Acton</i> .                                     | 313.  |
| —, Davis v., (Owners,) 4 <i>Sim.</i> 539.  | 269   | —, Fisher, (National Character,) 4 <i>C. Rob.</i>   | 25.   |
| — and Wright v. Goldamid, (Aliens,) <i>F. C.</i>   | 191.  | Joyce v. Williamson, (Average, Bottomry,) 3 <i>Doughl.</i>                                  | 164. ; 2 <i>Park on Ins.</i> 563. 896. ; 2 <i>Marsh on Ins.</i> |
| —, Hubbard v., (Navigation Laws,) 3 <i>Tasat</i> .   | 250. 252  | 760.  | 33. 60. 62  |
| — v. Margetson, (Flag Share,) 1 <i>H. Black.</i>   | 262.  | Jubilee, (Salvage,) 3 <i>Hagg</i> . 43. n.  | 331   |
| Johnstone, Sutton v., (Prize,) 1 <i>T. R.</i> 508.   | 399   | Judith, Randolph Petersfield v., (Damage,) <i>Abb. Sh.</i>                                  | 231.  |
| Jolly v. Young, (Freight,) 1 <i>Exp.</i> 186.  | 172   | Juffrow Anna, Gedtruth, (Further Proof,) <i>Hay &amp; Marriott</i> , 221.                   | 174   |
| Jones, exp., (Navigation Laws,) 2 <i>C. &amp; J.</i> 513.                                      | 253   | —, Anna, Grefson, (Further Proof, Prize, Title,) 1 <i>C. Rob.</i>                           | 124. (a) 174. 175. 318. 454                                     |
| —, Colbrooke v., (Consuls, Security for Costs,) 2 <i>Ves.</i> 154.                             | 101. 413  | Juffrow Catherine, Hansen, (Licences,) 5 <i>C. Rob.</i>                                     | 141.  |
| —, Ewer v., (Admiralty, Limitations, Prohibition,) 6 <i>Mod.</i> 26. ; 2 <i>Ld. Raym.</i> 935. | 6. 213. 345   | —, Elbrecht, Meintea, (Prize,) 1 <i>C. Rob.</i>   | 126.  |
| —, Goodrich v., (Witnesses,) 2 <i>Curtis</i> , 630.  | 509. n. 509. n.   | —, Maria Schroeder, Greenwood, (Blockade,) 3 <i>C. Rob.</i>                                 | 147. 154. 159. ; 4 <i>C. Rob.</i> 89. n.                        |
| —, Hartford v., (Salvage,) 1 <i>Ld. Raym.</i> 393.   | 368. n.   | 37. 39. 45. 47  |   |
| — v. Jones, (Pleadings,) 1 <i>Hagg. (Eccl.)</i> 254.   | 293   | Julia, (Licences,) 6 <i>Cranch's (Amer.) Rep.</i>   | 181.  |
| — v. White, (Damage,) 2 <i>Jur.</i> 363. ; 1 <i>Arn.</i> 85.                                   | 127   | — and Cargo, (Licences, Trade with the Enemy,) 1 <i>Gallison's (Amer.) Rep.</i>             | 595.  |
| Jonge Arend, Knowles, (Licences,) 5 <i>C. Rob.</i> 14.   | 200   | —, Ropes, (Blockade, Navigation Laws, Prize,) 1 <i>Dodson</i> , 169. n.                     | 43. 260. 319  |
| —, Bastman, Steyting, (Bail, Claimants, Salvage,) 5 <i>C. Rob.</i> 322.                        | 36. 98. 381. 397. 399   | Juliana, Carstena, (Trade with the Enemy,) 4 <i>C. Rob.</i>                                 | 328.  |
| —, Clara, Stevens, (Freight, Licences,) <i>Edw.</i> 371.                                       | 170. 200. 206   | —, Oglvie, (Admiralty, Wages,) 2 <i>Dodson</i> ,  | 504. 509. 516. 521.   |
| —, Clamina, Bol, (Licences, National Character,) 3 <i>C. Rob.</i> 297.                         | 200. 235  | Junge Ruiter, De Ruiter, (National Character,) 1 <i>Acton</i> , 116.                        | 296   |
| —, Frederick, Cloassen, (Licences,) <i>Edw.</i> 357.   | 204   | Jungfre Maria, (Affidavits, Further Proof,) <i>Hay &amp; Marriott</i> , 273.                | 9. 173. 174   |
| —, Gertruyda, (Contraband,) <i>Hay &amp; Marriott</i> , 246.                                   | 107   | Juno, Beard, (Blockade, Evidence, Freight, Further Proof, Licences,) 3 <i>C. Rob.</i>       | 116. 119.   |
| —, Guillaum, (Further Proof,) <i>Hay &amp; Marriott</i> , 230.                                 | 174   | 122. 45. 48. 151. 166. 174. 208   |   |
| —, Hermanns, (Contraband,) 4 <i>C. Rob.</i> 94.  | 104   | Jupiter, Crosbie, (Evidence, Mariners, Wages,) 2 <i>Hagg</i> . 221. 225.                    | 153. 214. 490   |
| —, Jacobus Beauman, Muller, (Captors, Contraband,) 1 <i>C. Rob.</i> 243.                       | 83. 110   | —, Henck, (Damage,) 3 <i>Hagg</i> . 320.  | 131   |
| —, Jan Schnill, (Captors, Contraband, Navy Board,) 1 <i>Dodson</i> , 453. 458.                 | 81. 85. 94. 107. 213. 262   | Jurado v. Gregory, (Admiralty,) 1 <i>Lev.</i> 267. ; 1                                      | 2   |
| —, Johannes, Parlerliet, (Licences,) 4 <i>C. Rob.</i> 263.                                     | 196. 198  | <i>Vent.</i> 32. ; 1 <i>Sid.</i> 418.   |   |
| —, Josias, Jurgensen, (Prize, Treaties,) <i>Edw.</i> 128.                                      | 325. 466  | Justice v. Brown, (Owners,) <i>Hardres</i> , 473.   | 269   |
|  |   | Justin v. Ballam, (Bottomry,) 1 <i>Salk.</i> 34.  | 58. 71  |

| K.   |  | Page  |
|--|--|---|
| Kahl v. Rahnsen, (Evidence,) 4 <i>Tunst.</i> 565.  |  | 153   |
| Kain v. Old, (Navigation Laws,) 2 <i>B. &amp; C.</i> 627.; 4 <i>D. &amp; R.</i> 52.  |  | 252   |
| Kammerheire, Rosenkrantz Morek, (Bottomry,) 1 <i>Hagg.</i> 62.   |  | 74  |
| Kara, (Nov. 12. 1841,) (Salvage,) 1 <i>Park on Ins.</i> 307.   |  | 379. n.   |
| Karasan, Yusef, (Captors,) 5 <i>C. Rob.</i> 291.   |  | 88  |
| Kashen v. Plan, (Security for Costs,) 1 <i>M. &amp; P.</i> 30.   |  | 411   |
| Keating v. Brooks and others, (Allegations, Pleadings,) 2 <i>Add.</i> 171., <i>Jan.</i> 1845, <i>Prerog.</i> (not reported).   |  | 17. n., 18. n. 291  |
| Keating, Maisonnaire et al. v., (Captors, Owners,) 2 <i>Gallison's</i> (Amer.) <i>Rep.</i> 334. 384.   |  | 87. n. 92. n. 266. n.   |
| Keating, Rex v. (Costs,) 1 <i>Dowl. P. C.</i> 440.   |  | 113   |
| Keed v. Everard, (Witnesses,) 3 <i>Curteis</i> , 337.  |  | 509   |
| Keir v. Andrade, (Licences,) 6 <i>Tunst.</i> 498.; 2 <i>Marsh.</i> 196.  |  | 206   |
| Keith (Lord) v. Pringle, (Flag Share,) 4 <i>East</i> , 261.  |  | 162.  |
| Kendall, Peter v., (Customs and Usages,) 6 <i>B. &amp; C.</i> 703.   |  | 121   |
| Kennerley Castle, (Bottomry,) 3 <i>Hagg.</i> 1. 7.   |  | 51. 56  |
| Kenrick v. Kenrick, (Allegations, Evidence, Practice,) 4 <i>Hagg.</i> (Eccl.) 127. 135.  |  | 18. 154. 305  |
| Kensington, Garrells v., (Prize,) 8 <i>T. R.</i> 230.; 2 <i>Park on Ins.</i> 759.  |  | 321   |
| — v. Inglis, (Aliens, Licences,) 8 <i>East</i> , 273.  |  | 14. 196. 209  |
| Kent, Leigh v., (Statutes,) 3 <i>T. R.</i> 364.  |  | 448   |
| Ker v. Duchess of Munster, (Security for Costs,) <i>Bun.</i> 35.   |  | 411   |
| Kerr v. Gillespie, (Evidence,) 7 <i>Beav. Ch.</i> 572.   |  | 155   |
| Kerswell v. Bishop, (Freight, Mortgagees,) 2 <i>C. &amp; J.</i> 529.; 2 <i>Tyr.</i> 602.   |  | 170. 232.   |
| Key, Scales v., (Customs and Usages,) 11 <i>Add. &amp; E.</i> 819.; 3 <i>Per. &amp; D.</i> 505.  |  | 121   |
| Kinder's Kinder, Haysen, (Claimant,) 2 <i>C. Rob.</i> 88.  |  | 97  |
| King v. Benson, (Colours, Contempt,) 3 <i>Hagg.</i> 96.  |  | 97. n. 99. 101  |
| —, Bridges v., (Fraud,) 1 <i>Hagg.</i> (Eccl.) 310.  |  | 163   |
| — v. Brown, (Royal Navy,) 3 <i>Hagg.</i> 97. n.  |  | 353   |
| — v. Brown, (Derelict,) 12 <i>Mod.</i> 135.; <i>Carth.</i> 399.  |  | 147   |
| — v. Fergusson, (Letters of Marque,) <i>Edw.</i> 84.   |  | 193   |
| — v. Forty-nine Casks of Brandy, (Crown, Droits of Admiralty, Neutrals, Wreck,) 3 <i>Hagg.</i> 203. 257. 271. 279. 282. 287.; 3 <i>Inst.</i> 113.; 4 <i>Inst.</i> 140. 275. 290.; 6 <i>Vin. Ab.</i> 121. |  | 1. 1. n. 5., 5. n. 118. 120. 148. 149. 265. 409. 410. 511. 512. 515. 517. |
| — v. Glover, (Wages,) 2 <i>N. R.</i> 206.  |  | 471   |
| —, Gurney v., (Security for Costs,) 3 <i>Dowl.</i> 559.; 1 <i>Har. &amp; W.</i> 203.   |  | 413   |
| — v. Ferry, (Bail,) 3 <i>Salk.</i> 23.   |  | 34  |
| — v. Player, (Wages,) 2 <i>Show.</i> 86.; <i>Sir L. Jenkins</i> , 81.; <i>Abb. Sh.</i> 655.  |  | 475. 498  |
| —, Ragg v., (Wages,) 2 <i>Stra.</i> 858.; <i>Barnard</i> , 297.  |  | 475, 476  |
| King, Sherwill v., (Cazador,) (Slave Trade,) 2 <i>Moore</i> , 1.   |  | 424. 442  |
| —, Waterhouse v., (Prize,) 2 <i>East</i> , 507.  |  | 330. 331  |
| — v. Whittaker, (Navigation Laws,) 1 <i>Hagg.</i> 145.   |  | 257. 260  |
| —, William, Smitt, (Wages,) 2 <i>W. Rob.</i> 231.; 8 <i>Jur.</i> 57.; 3 <i>Notes of Cases</i> , 14.  |  | 503   |
| —, in his Office of Admiralty, Lord Warden of Cinque Ports v., (Cinque Ports, Crown, Droits of Admiralty, Freight, Salvage,) 2 <i>Hagg.</i> 438. 441.  |  | 96. 119. 149. 169. 389  |
| —, in his Office of Admiralty v. Miller, (Colours, Practice,) 1 <i>Hagg.</i> 197.  |  | 99. 301   |
| —, in his Office of Admiralty, v. Property Derelict, (Droits of Admiralty, Prize,) 1 <i>Hagg.</i> 383.   |  | 144. 147. 333   |
| —, in his Office of Admiralty, v. Fifty-two Casks of Tallow, (Droits of Admiralty,) 3 <i>Hagg.</i> 299.  |  | 149   |
| —, in his Office of Admiralty, v. Two Casks of Tallow, (Droits of Admiralty, Wreck,) 3 <i>Hagg.</i> 297.   |  | 120. 149. 213. 511. 515   |
| King's Proctor v. Daines, (Evidence,) 3 <i>Hagg.</i> (Eccl.) 235.  |  | 155   |
| Kingston, Harman v., (Aliens,) 3 <i>Camp.</i> 152.   |  | 12. 14  |
| Kinlock, Taylor v., (Navigation Laws,) 1 <i>Stark. N. P. C.</i> 175.   |  | 252   |
| Kirk v. Nowell, (Statutes,) 1 <i>T. R.</i> 125.  |  | 448   |
| Kitto, Rex v., (Convoy,) 2 <i>Dodson</i> , 57.   |  | 111   |
| Klein Jurgen, Prott, (Blockade,) 1 <i>Acton</i> , 56.  |  | 38  |
| Klierlighthet, Sproerewig, (Prize,) 3 <i>C. Rob.</i> 96.   |  | 316   |
| Klingender v. Bond, (Licences,) 14 <i>East</i> , 484.  |  | 200   |
| Knight v. Berry, (Owners,) <i>Rep. temp. Holt</i> , 647.; 1 <i>Show.</i> 13.; <i>Comb.</i> 109.; <i>Carth.</i> 26.; 3 <i>Salk.</i> 23.   |  | 269   |
| — & Moore, Evans v., (Allegations, Witnesses,) 3 <i>Phil.</i> 418. 423.; 1 <i>Add.</i> 138. 143.   |  | 16. 17. 19. 508   |
| Knox, Joseph v., (Cargo,) 3 <i>Camp.</i> 332.  |  | 93. n.  |
| Koster v. Sapte, (Courts, Practice,) 1, <i>Curteis</i> , 702.  |  | 117. 307  |
| Kronts, Ancharet, (Further Proof,) <i>Hay &amp; Marriott</i> , 258.  |  | 174   |
| Krugor, Forsboom v., (Wages,) 3 <i>Camp.</i> 197.  |  | 499   |
| Kyte, Cameron v., (Crown,) 3 <i>Knapp.</i> 332. 342.   |  | 118, 119  |
| L.   |  |   |
| La Belle Coquette, Andriex, (Joint Capture, Witnesses,) 1 <i>Dodson</i> , 18.  |  | 190, 191, 192. 506  |
| La Bellone, Duperre, (Head Money, Practice,) 2 <i>Dodson</i> , 343. 349.   |  | 178. 300  |
| La Bonne Amitié, (Captors, Droits of Admiralty,) <i>Hay &amp; Marriott</i> , 160.  |  | 82. 147   |
| L'Actif, Lorrial, (Prize,) <i>Edw.</i> 185.  |  | 324   |
| Lacy, Rogers v., (Wages,) 2 <i>B. &amp; P.</i> 57.; 3 <i>Esp.</i> 43.  |  | 479   |
| La Dame Cecile, Barrell, (Navigation, Laws,) 6 <i>C. Rob.</i> 257.   |  | 258   |
| Ladbroke v. Crickett, (Admiralty, Bottomry, Prohibition,) 2 <i>T. R.</i> 649. 653.   |  | 4. 6. 53.   |
|  |  | 59. 346   |

## TABLE OF CASES.

lviii

|   | Page                            |  | Page                                       |
|---|---------------------------------|--|--|
| Lady Ann Wardell, (Witnesses,) <i>Edw.</i> , 235.               | 505. n.                         | Larigoity, Att. Gen. v., (Navigation Laws,) 2                      | 261  |
| — Banks, Vallance, (Ships,) 1 <i>Hagg.</i> 306.                 | 416                             | Price, 172.  |  |
| (— Brokes,) Winford v. Helier, (Witnesses,) 1                   |                                 | La Riviere, Stokes v., (Stoppage in Transitu,) 3 <i>T.</i>         | 446  |
| <i>Lee</i> , 274.   | 508                             | R. 466.; 3 <i>East</i> , 397.                                      |  |
| — Campbell, Beetham, (Wages,) 2 <i>Hagg.</i> 5. 10.             | 487. 495, 496. 502              | Larking, Woodward v., (Ransom, Ship's Register,                    | 347. 418. 455                              |
| 14. n.  | 487. 495, 496. 502              | Title,) 3 <i>Exp.</i> 266. 286.                                    |  |
| — Durham, Stewart, (Wages,) 3 <i>Hagg.</i> 196.                 | 471. 485. 498                   | Larkins, Mount v., (Costs,) 8 <i>Bing.</i> 195.; 1 <i>M. &amp;</i> | 113  |
| 201.  |                                 | Scott, 357.; 1 <i>Dowl. P. C.</i> 262.                             |  |
| — Wyndham's Case, (Wreck) 2 <i>Mod.</i> 294.                    | 512                             | La Rosine, (Droits of Admiralty, Cartel,) 2 <i>C. Rob.</i>         | 96. 149                                    |
|   |                                 | 372.   |  |
| La Esperanza, (Droits of Admiralty, Prize,) 1                   |                                 | Latham, Oliver v., (Witnesses,) 1 <i>Philips</i> , 408.            | 504. n.                                    |
| <i>Hagg.</i> 85. 91.  | 93. 146. 311. 504               | Laudale, Abernethy v., (Wages,) 2 <i>Dougl.</i> 539.               | 481  |
| La Flora, Klein, (Claimants, Further Proof, Prize,) 6           |                                 | Laurence v. Maud and Pickwell, (Costs,) 1 <i>Add.</i>              | 481.                                       |
| <i>C. Rob.</i> 1. 3. 9.   | 97. 102. 175. 320               |  | 112  |
| La Flore, Fils, (Joint Capture,) 5 <i>C. Rob.</i> 268.          | 186                             | Laurie, Gale v., (Owners,) <i>Abb. Sh.</i> 401.; 7 <i>D. &amp;</i> | 274  |
|   |                                 | R. 711.; 5 <i>B. &amp; C.</i> 156.; 1 <i>Hagg.</i> 109.            |  |
| L'Africaine, Soult v., (Neutrals,) <i>Bee's</i> (Amer.)         | 265. n.                         | Lavie, Pieschell v., (Licences,) 4 <i>Taunt.</i> 792.              | 203. 206                                   |
| <i>Rep.</i> 204.  | 297                             | La Virginie, Coigneau, (Joint Capture, National                    | 192. 235                                   |
| Lagan, otherwise Mimax, (Possession,) 3 <i>Hagg.</i>            | 297                             | Character,) 5 <i>C. Rob.</i> 90. 124.                              |  |
| 418.  |                                 | Laybourn, Jacobs v., (Witnesses,) 3 <i>Dowl. N. S.</i>             | 606  |
| La Gloire, Limousin, (Cartel,) 5 <i>C. Rob.</i> 192.            | 95                              | 352.; 11 <i>M. &amp; W.</i> 685.                                   |  |
| — and three others, (Head Money,) <i>Edw.</i>                   | 179                             | La Ysabel, Bozo, (Bottomry,) 1 <i>Dodson</i> , 273. 277.           | 375.                                       |
| 280.  |                                 |  | 57. 58. 67. 70. 76.                        |
| La Henriette, (Joint Capture,) 2 <i>Dodson</i> , 96.            | 189, 190                        | Leake, Thompson v., (Navigation Laws,) 1 <i>Mad.</i>               | 39.  |
| Laing v. Ingham, (Appeals,) 3 <i>Moore</i> , 26.                | 24                              |  | 252, 253                                   |
| Lainson, Boucher v., (Owners,) <i>Cas. temp. Hard.</i>          | 271                             | Leander, Flinn et al. v., (Derelicts,) <i>Bee's</i> (Amer.)        | 144. n.                                    |
| 85.   |                                 | <i>Rep.</i> 260.   |  |
| L'Alerte, Demay, (Head Money,) 6 <i>C. Rob.</i> 238.            | 179                             | —, Murray, formerly Lewis, (Wages,) <i>Edw.</i>                    | 482. 497                                   |
|   |                                 | 35.  |  |
| La Lume, (Head Money,) 1 <i>Hagg.</i> 210.                      | 179                             | Le Bon Aventure, Lamoriniere, (Evidence, Joint                     | 203. 242. 418                              |
| La Madonna della Lettera, (Captors, Prize,) 2                   |                                 | Capture, Trinity Masters,) 1 <i>Acton</i> , 211. 229.              |  |
| <i>Hagg.</i> 289.   | 91. 314, 315                    | 237.   | 153. 184. 187. 189. 466.                   |
| Lambert v. Acretree, (Owners,) 1 <i>Ld. Raym.</i> 223.          | 269                             | Le Breton, Fletcher v., (Pleadings,) 3 <i>Hagg.</i> (Eccl.)        | 365.                                       |
| Lambton, (Salvage military,) 6 <i>C. Rob.</i> 273.              | 403                             |  | 293  |
|   |                                 | Le Brit v. Papillon, (Aliens,) 4 <i>East</i> , 502.                | 13   |
| La Melanie, Lafitte, (Blockade, Captors, Joint Cap-             |                                 | Le Caux v. Eden, (Prize,) 2 <i>Dougl.</i> 594.                     | 313  |
| ture,) 2 <i>Dodson</i> , 122. 130.                              | 38. 82. 186, 187                | Le Cheminant v. Allnutt, (Licences,) 4 <i>Taunt.</i> 367.          | 203  |
| La Mignone, (Captors, Droits of Admiralty,) 1                   |                                 | — v. Pearson, (Licences, National Char-                            | 203. 242. 418                              |
| <i>Hay &amp; Marriott</i> , 221.                                | 82. 147                         | acter,) 4 <i>Taunt.</i> 367.                                       |  |
| Lamii v. Sewell, (Security for Costs,) 1 <i>Wils.</i> 266.      | 412                             | Lechmere, Speldt v., (National Character,) 13 <i>Ves.</i>          | 588.                                       |
| L'Amitié, Villeneuve, (Joint Capture, Witnesses,) 6             |                                 |  | 250. 252                                   |
| <i>C. Rob.</i> 261. 267. 269. n.                                | 186, 187; 192.                  | Leckie, Maeburn v., (Title,) <i>Abb. Sh.</i> 10.                   | 453  |
|   | 505. n.                         | Lee, Clerk v., (Admiralty,) 10 <i>Mod.</i> 264.                    | 7  |
| Land v. North, (Aliens,) 4 <i>Dougl.</i> 266.                   | 15                              | Leeder, Biddell v., (Navigation Laws,) 1 <i>B. C.</i>              | 327.; 2 <i>D. &amp; R.</i> 499.            |
| Lane, Yougenheim v., (Costs, Paupers,) 4 <i>Dowl. P.</i>        |                                 |  | 252  |
| <i>C.</i> 482.; 1 <i>M. &amp; W.</i> 136.; 1 <i>Gale</i> , 343. | 115. 282                        | Lees v. Summersgill, (Statutes,) 17 <i>Ves. jun.</i> 508.          | 447  |
|   |                                 |  |  |
| Lang, Glascott v., (Bottomry,) 3 <i>Myl. &amp; C.</i> 453.;     |                                 | Leevin v. Cormac, (Licences,) 4 <i>Taunt.</i> 483. n.              | 202  |
| 8 <i>Sin.</i> 358.; 2 <i>Jur.</i> 909.                          | 53, 54. 69                      |  |  |
| Langdon, Cheeves, (Wages,) 2 <i>Mason's</i> (Amer.)             |                                 | Le Francha, (Head Money,) 1 <i>C. Rob.</i> 157.                    | 178  |
| <i>Rep.</i> 58.   | 496. n.                         | Le Franc, Caspe, (Droits of Admiralty, Joint Cap-                  | 148. 185. 189                              |
| Langhorn v. Allnutt, (Evidence,) 4 <i>Taunt.</i> 511.           | 153                             | ture,) 2 <i>C. Rob.</i> 285.                                       |  |
|   |                                 | Le Grand Terein, (Captors, Droits of Admiralty,) 1                 | 82. 147                                    |
| Langton v. Horton, (Owners,) 6 <i>Jur.</i> 910.; 1              |                                 | <i>Hay &amp; Marriott</i> , 155.                                   |  |
| <i>Hare</i> , 549.; <i>Abb. Sh.</i> 401.                        | 275                             | Leigh v. Burleigh, (Material Men,) <i>Cow.</i> 122.                | 226  |
| La Prosperite, or Welfaren, (Further Proof, Prize,) 1           |                                 | — v. Kent, (Statutes,) 3 <i>T. R.</i> 364.                         | 448  |
| <i>Hay &amp; Marriott</i> , 95. 164.                            | 176. 317                        | L'Elise, or Louisa, (Head Money,) 1 <i>Dodson</i> , 442.           | 179  |
| La Purissima Conception, Aneres, (Aliens, Cap-                  |                                 |  |  |
| tors, Licences, Owners, Prize,) 5 <i>C. Rob.</i> 33. 45.        |                                 | Le Louis, Forest, (Captors, Courts, Evidence,                      |  |
| 357. n.   | 13. 90. 143. 209. 266. 316. 469 | Navigation Laws, Pirates, Prize, Slave Trade,) 2                   | 263. 338.                                  |
| L'Arina v. Exchange, (Wages,) <i>Bee's</i> (Amer.) <i>Rep.</i>  | 198.                            |  |  |
|   | 475. n.                         | 7. 85. 117. 156. 163. 194. 249. 290. 319.                          | 423. n. 427. 445. 448. 469                 |
| La Reine, Elizabeth, (Commissioners, Head                       |                                 |  |  |
| Money,) 2 <i>C. Rob.</i> 34. 38.                                | 99, 100. 178. 181               | Le Mann v. Bonsal, (Paupers,) 1 <i>Add.</i> 399.                   | 282  |
| Large, Luxford v., (Damage,) 5 <i>Car. &amp; P.</i> 421.        | 126                             | Lemecka, Vaughan, (Licences,) 7 <i>D. &amp; R.</i> 236.;           | 8 <i>Moore</i> , 646.; 1 <i>Bing.</i> 473. |
|   |                                 |  | 200  |

|   | Page                             |  | Page  |
|---|----------------------------------|--|---|
| Le Neve v. Edinburgh and London Shipping Company, (Damage,) 1 <i>S.</i> 378.; 20 <i>F. C.</i> 580.                    | 124                              | Llewellyn, Johnson v., (Wages,) 1 <i>Taunt.</i> 386.; 6 <i>Esp.</i> 101.   | 501   |
| — Hay v., (Damage,) 2 <i>Shaw's Scotch App.</i> 395.; 1 <i>Bell</i> , 581. n. 3.; <i>Abb. Sh.</i> 230.                | 125. 125. n.                     | Lloyd and Clark v. Poole, (Appeals, Costs,) 3 <i>Hagg.</i> (Eccl.) 477. 482.   | 23. 24. 115                                 |
| Le Niemen, Dupotet, (Answers, Evidence, Joint Capture, Practice,) 1 <i>Dodson</i> , 10. 16.                           | 21. 153. 183. 187. 188. 190. 305 | — v. Lloyd, (Evidence,) 2 <i>Curtis</i> , 263.   | 155   |
| L'Eole, Rosseau, (Captors, Navigation Laws, Prize,) 6 <i>C. Rob.</i> 220. 225.  | 87. 258. 310                     | — v. Lord Trimlestown, (Courts,) 4 <i>Sim.</i> 296.  | 116   |
| Le Perlan, (Prize,) <i>Hay &amp; Marriott</i> , 235.  | 322                              | Lochiel, Miles, (Bottomry,) 2 <i>W. Rob.</i> 34.; 7 <i>Jur.</i> 265.; 2 <i>Notes of Cases</i> , 177.   | 58. 64. 67                                  |
| Leslie v. Guthrie, (Freight,) 1 <i>Scott</i> , 683.   | 165. n.                          | Lock v. Denner, (Allegations,) 1 <i>Add.</i> 360.  | 18  |
| L'Esperance, Stegman, (Salvage,) 1 <i>Dodson</i> , 46. 50.  | 351. 368. 381. 467.              | —, Schumack v., (Evidence,) 10 <i>Moore</i> , 39.  | 154   |
| Les Quatres Freres, (Prize,) <i>Hay &amp; Marriott</i> , 170.   | 325                              | Lockwood v. Lockwood, (Witnesses,) 2 <i>Curtis</i> , 209. 282.   | 505, 506                                    |
| Lester v. Baxter, (Bottomry,) <i>Str.</i> 698.; 1 <i>Com. Dig.</i> 271.; <i>Abb. Sh.</i> 163.                         | 52. n. 57                        | Lockwoods, (Salvage,) 9 <i>Jur.</i> 1017.  | 375   |
| Le Theodore, (National Character,) <i>Hay &amp; Marriott</i> , 258.   | 238                              | Logan v. Burslem, (Guiana,) (Appeals, Slave Trade,) 4 <i>Moore</i> , 284. 292.; 7 <i>Jur.</i> 1.   | 27. n. 443                                  |
| L'Etoile, Philibert, (Evidence, Joint Capture,) 2 <i>Dodson</i> , 106. 113.   | 152. 153. 183. 188               | Londonderry (High Court of Admiralty,) (Damage,) 4 <i>Notes of Cases, Supp.</i> xxxi. xli.   | 129. n.                                     |
| Leuckhart v. Cooper, (Customs & Usages,) 7 <i>Car. &amp; P.</i> 119.  | 121                              | London, Brown, (Salvage military,) 2 <i>Dodson</i> , 74.   | 404   |
| Levy v. Allnutt, (Prize,) 15 <i>East</i> , 267.   | 332                              | — Merchant, Laker, (Salvage,) 3 <i>Hagg.</i> 394. 401.   | 375. 378. 386. 398                          |
| —, Ganesford v., (Security for Costs,) 2 <i>H. Black.</i> 118.  | 412                              | — Packet, Britt, (Damage,) 2 <i>W. Rob.</i> 213.; 2 <i>Notes of Cases</i> , 503.   | 132   |
| Lewin and others, Craigie and Craigie v., (National Character,) 3 <i>Curtis</i> , 435.                                | 237                              | Lonergan v. Royal Exchange Assurance Company, (Costs,) 1 <i>Dowl. P. C.</i> 233.; 5 <i>M. &amp; P.</i> 805.; 7 <i>Bing.</i> 729.   | 114   |
| Lewis, Talbot v., (Wreck,) 1 <i>C. M. &amp; R.</i> 49. 51.  | 516                              | Long v. Commissioners for Claims on France, (National Character,) 2 <i>Knapp.</i> 51.  | 241   |
| — (Wreck,) 6 <i>Car. &amp; P.</i> 603.  | 512                              | —, Curling v., (Freight,) 1 <i>Bos. &amp; Pull.</i> 634.; <i>Abb. Sh.</i> 463.   | 165   |
| L'Hercule, (Head Money,) 1 <i>Hagg.</i> 211.  | 178. 179                         | —, Mills v., (Wages,) 1 <i>Sayer's Rep.</i> 136.   | 475   |
| Liebert et al. v. Emperor, (Bottomry,) <i>Bee's</i> (Amer.) <i>Rep.</i> 339.  | 61. n.                           | Lopes v. De Tastet, (Costs,) 7 <i>Moore</i> , 120.; 3 <i>B. &amp; B.</i> 292.  | 113, 114                                    |
| Liefde and Jacobine, Croes, (Prize,) 6 <i>C. Rob.</i> 93.   | 332                              | Lopez v. Burslem, (Guiana,) (Slave Trade) 7 <i>Jur.</i> 1119.; 4 <i>Moore</i> , 300.   | 443   |
| Liesbet Van Den Toll, Heest, (National Character,) 5 <i>C. Rob.</i> 283.  | 240                              | Lord Auckland, (Freight,) 8 <i>Jur.</i> 478.; 2 <i>W. Rob.</i> 301.  | 165   |
| Lige, Ligo, (Damage,) 2 <i>Hagg.</i> 356.   | 137                              | — Chidworth v. Edwards, (Interest,) 8 <i>Ves.</i> 48.  | 181   |
| Lillie v. Lillie, (Security for Costs,) 2 <i>Myl. &amp; K.</i> 404.   | 413                              | — Cochrane, Smith, (Bottomry, Masters, Trade with the Enemy,) 8 <i>Jur.</i> 715.; 3 <i>Notes of Cases</i> , 172. 180. 712.; 1 <i>W. Rob.</i> 312.; 2 <i>W. Rob.</i> 320.; 1 <i>Notes of Cases</i> , 283. | 58. 61. n. 66. 69. 70. 73. 76. 94. 223. 458 |
| Lima, Fewson, (Damage personal, Mariner's Contracts, Wages,) 3 <i>Hagg.</i> 346. 353. 359. 362.                       | 142. 217. 487. 489. 493          | — Goderich, (Salvage, Tenders,) 10 <i>Monthly Law Mag.</i> 217.  | 388. n. 397. n. 399. n. 449. n.             |
| Limerick and Waterford Railway Company v. Fraser, (Security for Costs,) 4 <i>Bing.</i> 394.; 1 <i>M. &amp; P.</i> 23. | 413                              | — Hobart, Gamage, (Affidavits, Practice, Wages,) 2 <i>Dodson</i> , 101. 104.   | 9. 304. 475, 476. 498. 501.                 |
| Limland v. Stephens, (Wages,) 3 <i>Esp.</i> 269.; <i>Abb. Sh.</i> 174.  | 490. 491                         | — Middleton, Mentré, (Joint Capture,) 4 <i>C. Rob.</i> 153.  | 181. 184. 186                               |
| Lindo v. Rodney, (Prize,) 2 <i>Dougl.</i> 613. n.   | 312. 313                         | — Nelson, Luckie, (Salvage military,) <i>Edw.</i> 79.  | 403   |
| L'Invidiato, Casnacich, (Further Proof,) 1 <i>Acton</i> , 110.  | 176                              | — Seaton, (Evidence,) 9 <i>Jur.</i> 603.   | 153. 156                                    |
| L'Invincible, (Prize,) 1 <i>Wheaton's</i> (Amer.) <i>Rep.</i> 238.  | 311. n.                          | — Trimlestown, Lloyd v., (Courts,) 4 <i>Sim.</i> 296.  | 116   |
| Linzee, Wemyss v., (Prize,) 1 <i>Dougl.</i> 324.  | 331                              | — Warden of Cinque Ports v. King in Office of Admiralty, (Crown, Droits of Admiralty, Salvage,) 2 <i>Hagg.</i> 438. 441.   | 96. 119. 120. 149. 389                      |
| Lippman, Don v., (Costs and Damages, Practice,) 5 <i>Clark &amp; Fin.</i> 1.  | 117. 194. 300                    | Lords Commissioners of Appeal in Prize Cases, Willis v., 5 <i>East</i> , 22.; 1 <i>Smith</i> , 339.  | 91. 310. 312. 336. 340. 341                 |
| Lisette, Steg, (Blockade, Contraband, Trade with the Enemy,) 6 <i>C. Rob.</i> 387. 394.                               | 45. 47. 107. 463                 | Lothian, Henderson, Rendall, & Co. v., (Evidence,) 12 <i>F. C.</i> 428. 434.; <i>Mor. No. 4. App. Assurance.</i>   | 152. n.                                     |
| Lister v. Payne, (Navigation Laws,) 11 <i>Sim.</i> 348.; <i>Abb. Sh.</i> 78.  | 253                              |  |   |
| Littler v. Thompson, (Contempt,) 2 <i>Beav.</i> 129.  | 101                              |  |   |
| Little William, Brown, (Blockade, Claimants, Further Proof,) 1 <i>Acton</i> , 141. 148. 44.                           | 98. 176                          |  |   |
| Liveday, (Claimants,) 2 <i>Stair's Decisions</i> , 229.   | 97. n.                           |  |   |

|  | Page            |
|--|-----------------|
| Louisa, (Prize,) <i>Hay &amp; Marriott</i> , 143.  | 322             |
| ——, (Salvage,) 2 <i>W. Rob.</i> 22. 26.; 7 <i>Jur.</i> 182.  | 356. 390. 393.  |
| ——, Higginbotham, (Freight, Salvage,) 1 <i>Dodson</i> , 307.   | 166. 361. 400   |
| Louise Charlotte De Guldenerom, Hansen, (Licences,) 1 <i>Dodson</i> , 308.   | 207             |
| Lousada, Schimmel v., (Costs,) 4 <i>Tawnt.</i> 695.  | 114             |
| Love v. Baker, (Courts,) 1 <i>Ch. Ca.</i> 67.; <i>Nelson</i> , 103.  | 117             |
| Loveden v. Loveden, (Appeals,) 1 <i>Phill.</i> 208.  | 22              |
| Lovekin and others v. Edwards and others, (Paupers,) 1 <i>Phill.</i> 179. 183.   | 282             |
| Lovell v. Meadows, (Security for Costs,) <i>Mur. &amp; H.</i> 45.  | 412             |
| Lowe, Goodhart v., (Stoppage in Transitu,) 2 <i>Jac. &amp; W.</i> 349.   | 446             |
| Lowrey v. Doubleday, (Costs,) 5 <i>M. &amp; S.</i> 159. n.   | 114             |
| Lowther Castle, Baker, (Damage personal,) 1 <i>Hagg.</i> 384.  | 142, 143        |
| Lubbock v. Potts, (Navigation Laws,) 7 <i>East</i> , 449.; 2 <i>Park on Ins.</i> 544.  | 255. n.         |
| Lucena v. Crauford, (Bottomry,) 2 <i>N. R.</i> 269.  | 62              |
| Lucey v. Ingram, (Owners,) 2 <i>W. Rob.</i> 184.; <i>Abb. Sh.</i> 206.   | 278             |
| Luck v. Seward, (Damage,) 4 <i>Car. &amp; P.</i> 106.  | 126             |
| Lucretia, (Captors, Prize, Salvage military,) <i>Hay &amp; Marriott</i> , 227.   | 83. 323         |
| ——, 348. 401. 404. n.  |                 |
| Lucey, Glover, (Trade with the Enemy,) 4 <i>C. Rob.</i> 14. <i>App.</i> 14. (a)  | 459             |
| ——, Taylor, (Title,) <i>Edw.</i> 122.  | 455             |
| ——, Treadwell, (Freight,) 3 <i>C. Rob.</i> 208.  | 172             |
| Luke v. Lyde, (Freight,) 3 <i>C. Rob.</i> 180. 186.  | 166             |
| Lull, Brown v., (Mariners, Wages,) 2 <i>Summer's</i> (Amer.) <i>Rep.</i> , 443.  | 215. n. 481. n. |
| ——, 484. n. 497. n.  |                 |
| Lumley v. Sutton, (Prize,) 8 <i>T. R.</i> 224.   | 330             |
| Luna, Southworth, (Blockade,) <i>Edw.</i> 190.   | 38              |
| Lunn, Manning v., (Tenders,) 2 <i>Car. &amp; K.</i> 13.  | 449             |
| Lupper v. Newark, (Witnesses,) 2 <i>Car. &amp; K.</i> 24.  | 505             |
| Lusitano, Dos Santos, (Possession, Practice,) 1 <i>W. Rob.</i> 166.  | 299. 303        |
| Lastre, Finlay, (Salvage,) 3 <i>Hagg.</i> 154.   | 361. 384        |
| Lutwidge v. Grey, (Freight,) <i>Dom. Proc.</i> ; <i>Abb. Sh.</i> 438.  | 166             |
| Luxford v. Large, (Damage,) 5 <i>Car. &amp; P.</i> 421.  | 126             |
| Lyall, Dobson v., (Bottomry,) 3 <i>Myl. &amp; Craig</i> , 454.; <i>Abb. Sh.</i> 160.; 8 <i>Sym.</i> 358.; 2 <i>Jur.</i> 909.; 8 <i>Jur.</i> 969.; 2 <i>Park on Ins.</i> 873. | 53, 54.         |
| ——, 57. 65. 69   |                 |
| ——, Robinson v., (Masters,) 7 <i>Price</i> , 592.; <i>Abb. Sh.</i> 139.  | 224             |
| Lyde, Luke v., (Freight,) 3 <i>C. Rob.</i> 180.  | 166             |
| Lydiahead, Stanwood, (Further Proof,) 2 <i>Acton</i> , 133.  | 174             |
| Lynch, Exp., (Prize,) 1 <i>Mad.</i> 15.  | 312             |
| Lynne, Gardiner (Lady) v., (Flag Share,) 13 <i>East</i> , 574.   | 159. 161        |
| Lyon, Smith v., (Evidence,) 3 <i>Camp.</i> 465.  | 154             |
| ——, Usher v., (Pilots,) 2 <i>Price</i> , 118.  | 284             |
| Lyrius, Scarborough v., (Bottomry,) 3 <i>Car. &amp; Latch.</i> 252.; <i>Noy.</i> 95.; 14 <i>Fin. Abr.</i> 392. 52. n.  | 55              |

## M.

|  | Page                                      |
|--|---|
| M'Alpine v. Poles, Powles, or Coles, (Costs,) 1 <i>C. &amp; M.</i> 795.; 3 <i>Tyr.</i> 871.; 2 <i>Dowl. P. C.</i> 299.                             | 114                                       |
| M'Auliff v. Bicknell, (Wages,) 2 <i>C. M. &amp; R.</i> 263.; 1 <i>Gale</i> , 232.; 5 <i>Tyr.</i> 1035.   | 486, 487                                  |
| M'Calmont, Duncan v., (Bottomry,) 3 <i>Beav.</i> 409.; <i>Abb. Sh.</i> 163.  | 54  |
| M'Donald v. Jopling, (Wages,) 3 <i>Hagg.</i> 36.; 4 <i>Mer. &amp; W.</i> 285.; 1 <i>H. &amp; H.</i> 271.; 2 <i>Jur.</i> 790.; <i>Abb. Sh.</i> 645. | 490. 493                                  |
| ——, O'Laughla v., (Security for Costs,) 3 <i>Moore</i> , 77.   | 413                                       |
| M'Donnell, Robinson v., (Navigation Laws,) 5 <i>M. &amp; S.</i> 228.   | 252                                       |
| M'Douall, Dalhousie v., (National Character,) 7 <i>Clark &amp; Fin.</i> 817.   | 236, 237                                  |
| —— v. M'Douall, (Wreck,) <i>House of Lords</i> , 1825.   | 510. n.                                   |
| Mc Faddon, (schooner,) Exchange v., (Neutrals, Salvage, Ships, Title,) 2 <i>Cranch's</i> (Amer.) <i>Rep.</i> 115.                                  | 266. n. 357. n. 415. n. 451. n.           |
| M'Gee, Dean v., (Contraband,) 4 <i>Bing.</i> 45.; 12 <i>Moore</i> , 185.; 2 <i>Car. &amp; P.</i> 387.  | 110. 232                                  |
| M'Gowan and others, Hunter & Co. v., (Owners,) 1 <i>Bigh.</i> 573.; <i>Abb. Sh.</i> 401.   | 273. n.                                   |
| Macbell, Exp., (Navigation Laws, Owners, Possession,) <i>Rose</i> , 447.; 2 <i>V. &amp; B.</i> 216.  | 250. 268. 295                             |
| Machielsne, Johnson v., (Wages,) 3 <i>Camp.</i> 44.  | 477                                       |
| M'Intosh, Barlow v., (Licences,) 12 <i>East</i> , 311.   | 208                                       |
| ——, Sherwood v., (Wages,) <i>Adm. Dec. in the District Court of Maine</i> , <i>Curt. Adm. Dig.</i> 522.  | 491. n.                                   |
| —— v. Slade, (Owners,) 6 <i>B. &amp; C.</i> 657.; 9 <i>D. &amp; R.</i> 738.; <i>Abb. Sh.</i> 210.  | 278                                       |
| M'Iver, Hill v., (Security for Costs,) 1 <i>Tidd's</i> <i>Prac.</i> 579.   | 413                                       |
| Mackenzie v. Maylor, (Prize,) 4 <i>Dougl.</i> 3.   | 330                                       |
| —— v. Yeo, (Evidence,) 2 <i>Curteis</i> , 868.   | 875.; 1 <i>Phil. on Ev.</i> 139., 5th ed. |
| Mackrell v. Simond, (Freight,) 2 <i>Chitt.</i> 666.; <i>Abb. Sh.</i> 463.  | 166                                       |
| M'Lean v. Austin, (Security for Costs,) 1 <i>Tidd's</i> <i>Prac.</i> 579.  | 413                                       |
| Maclean v. Maclean, (Allegations, Practice,) 2 <i>Hagg.</i> (Eccl.) 601.   | 18. 305                                   |
| M'Manus v. Crickett, (Owners,) 1 <i>East</i> , 106.  | 271                                       |
| M'Math, Wilson v., (Costs,) 3 <i>Phill.</i> 92.  | 112                                       |
| Macnamara v. Macquire, (Courts,) <i>Dick.</i> 223.   | 117. n.                                   |
| M'Pherson, Allen v., (Witnesses,) 2 <i>Curteis</i> , 515.  | 505. n.                                   |
| ——, Brummell v., (Crown, Prize, Prize Agents,) 5 <i>Russ.</i> 263.   | 120. 328. 341                             |
| Macquire, Macnamara v., (Courts,) <i>Dick.</i> 223.  | 117. n.                                   |
| Maddox v. ———, (Wages,) 12 <i>Mod.</i> 526.  | 475                                       |
| Madison, Frost, (Contraband,) <i>Edw.</i> 224. 274.  | 100. 105                                  |
| Madonna del Burso, Antonopoli, (Captors, Neutrals,) 4 <i>C. Rob.</i> 169. 172.   | 90. 143.                                  |
| ——, 262, 263   |   |
| —— delle Gracie, Copenzia, (Trade with the Enemy,) 4 <i>C. Rob.</i> 195.   | 458                                       |
| —— d'Idra, Paphagica, (Bottomry, Mariners, Wages,) 1 <i>Dodson</i> , 40.   | 74. 214. 216. 478. 497                    |

|   | Page                            |   | Page  |
|---|---------------------------------|---|---|
| Madrazo v. Willis, (Slave Trade,) 3 <i>B. &amp; A.</i>                                      | 353.                            | Maria Theresa, Phillips, (Aliens, Wages,) 1 <i>Dodson</i> ,   | 303.  |
| Maeburn v. Leckie, (Title,) <i>Abb. Sh.</i>   | 10.                             | — 15. 473, 474  |   |
| Magnus, Sorensen, (Further Proof, Prize, Trade with the Enemy,) 1 <i>C. Rob.</i>            | 31. 35.                         | — v. Wall, (Security for Costs, Slave Trade,) 2 <i>B. &amp; P.</i>                                    | 236.  |
|   | 173. 176.                       | — Witt, (Owners, Pilots,) 1 <i>W. Rob.</i>  | 95. 102.                                    |
|   | 318. 458                        | 110.  | 277. 279. 280. 281. 284                     |
| Mahon v. Martinez, (Security for Costs,) 4 <i>Moore</i> ,                                   | 356.                            | Marianna, Dos Santos, (Droits of Admiralty, Liens, Pirates, Recapture, Salvage mixed,) 3 <i>Hagg.</i> | 200. 206.                                   |
|   | 413                             | 149. 210. 287. 348. 408   |   |
| Mair, Gibson v., (Prize,) 1 <i>Marsh.</i>   | 39.                             | —, Posadillo, (Bottomry, Captors, Liens, National Character, Prize,) 6 <i>C. Rob.</i>                 | 24. 29.                                     |
| Maisonnaire et al. v. Keating (Captors, Neutrals,) 2 <i>Gallison's</i> (Amer.) <i>Rep.</i>  | 334. 384.                       | 62. 85. 87. 211. 244. 246. 318. 325   |   |
|   | 87. n. 92. n. 266. n.           | Marianne, Morel, (Letters of Marque,) 5 <i>C. Rob.</i>  | 9.  |
| Maitland, Studd, (Material Men,) 2 <i>Hagg.</i>   | 253.                            | 193   |   |
|   | 227. n.                         | Mariner's case, (Wages,) 8 <i>Mod.</i>  | 379.  |
| Mallet, Creed v., (Wages,) <i>Fort.</i>   | 231.                            | 473   |   |
| Malmberg, Winbled v., (Evidence,) 1 <i>Esp.</i>   | 454.                            | Marquis of Huntley, Molisson, (Salvage, Tenders,) 3 <i>Hagg.</i>                                      | 246.  |
|   | 151                             | 378. 385. 394. 449  |   |
| Maloney v. Smith, (Security for Costs,) <i>M. Clcl. &amp; F.</i>                            | 213.                            | Mars, (Joint Capture,) 2 <i>C. Rob.</i>   | 22.   |
|   | 413                             | —, Murfey, (Further Proof,) 6 <i>C. Rob.</i>  | 79.   |
| Malta, Young, (Captors, Evidence, Wages,) 2 <i>Hagg.</i>                                    | 146. n. 158. n. 162. 166. 172.  |   | 175   |
|   | 92. 153. 471. 482. 495, 496     | Marsh, Alleson v., (Wages,) 2 <i>Vent.</i>  | 181.  |
| Maltass v. Maltass, (National Character,) 1 <i>Robertson</i> ,                              | 75.                             | 498   |   |
|   | 236. 241. 464                   | —, Rex v., (Pirates,) 3 <i>Bulet.</i>   | 27.   |
| Manchester, (Owners,) 8 <i>Monthly Law Mag.</i>   | 183.                            | — v. Robinson, (Ship's Register,) 4 <i>Esp.</i>   | 98.   |
|   | 280. n.                         | 418   |   |
| —, Macleod, (Allegations, Answers, Evidence, Practice,) 1 <i>W. Rob.</i>                    | 62. 94.                         | — v. Tyrrell and Harding, (Fraud, Pleadings,) 1 <i>Hagg.</i> (Eccl.),                                 | 183.  |
|   | 16. 20, 21.                     | 163. 291  |   |
| —, Reynolds, (Blockade,) 2 <i>Acton</i> ,   | 154. 301. 307                   | Marshall v. Parker, (Evidence,) 2 <i>Camp.</i>  | 69.   |
|   | 47                              | 152   |   |
| Manhill, Williams v., (Navigation Laws,) 1 <i>Moore</i> ,                                   | 168.; 7 <i>Townt.</i>           | —, Williams v., (Licences,) 6 <i>Townt.</i>   | 390.; 2                                     |
|   | 468.                            | <i>Marsh.</i>   | 92.; 1 <i>Moore</i> , 168.; 7 <i>Townt.</i> |
| Manilla, Burrett, (National Character,) <i>Edw.</i>   | 1.                              | 468. 203  |   |
|   | 234                             | — v. Wilson, (Bottomry,) <i>Abb. Sh.</i>  | 148.  |
| Manley, Hansen, (Aliens, Licences,) 1 <i>Dodson</i> ,                                       | 259,                            |   | 52  |
|   | 260.                            | Martha, Tartin, (Freight,) 3 <i>C. Rob.</i>   | 106.  |
| Manning v. Lunn, (Tenders,) 2 <i>Car. &amp; K.</i>  | 13.                             | —, Viner, (Salvage,) 3 <i>Hagg.</i>   | 434.  |
|   | 449                             | 366. 382. 392   |   |
| Mappledoram, Carslake v., (Prohibition,) 2 <i>T. R.</i>                                     | 473.                            | Martin, Crouch v., (Wages,) 2 <i>Vern.</i>  | 595.  |
|   | 346                             | —, q. t. v. Greenleaf, (Wages,) 2 <i>Esp.</i>   | 729.  |
| Margaret, Heard, (Contraband,) 1 <i>Acton</i> ,   | 383.                            | 501   |   |
|   | 108                             | — of Norfolk, M <sup>c</sup> Crohan, (Possession,) 4 <i>C. Rob.</i>                                   | 293.  |
| —, Nunn, (Tenders, Wages,) 3 <i>Hagg.</i>   | 238.                            | 295, 296  |   |
|   | 449. 497, 498                   | — v. Robinson, (Witnesses,) 2 <i>Lee</i> ,  | 397.  |
| —, Ray, (Salvage,) 2 <i>Hagg.</i>   | 48. n.                          | 507   |   |
| —, Tomison, (Owners,) 2 <i>Haggard</i> ,  | 275.                            | —, Sparks v., (Admiralty, Contempt,) 1 <i>Vent.</i>   | 1.; 6 <i>Vin. Abr.</i>                      |
|   | 270                             | 522.  | 6. 101. n.                                  |
| Margaretha Magdalena, Predborn, (Contraband, Prize, Trade with the Enemy,) 2 <i>C. Rob.</i> | 138.                            | — v. Temperley, (Owners,) 3 <i>Gale &amp; D.</i>  | 497.;                                       |
|   | 141.                            | 4 <i>Ad. &amp; E. N. S.</i>   | 298.  |
| Margetson, Johnston v., (Flag Share,) 1 <i>H. Black.</i>                                    | 262.                            | Martinez, Mahon v., (Security for Costs,) 4 <i>Moore</i> ,  | 356.  |
|   | 162                             | 413   |   |
| Marguerite, (Captors,) 4 <i>C. Rob.</i>   | 217.                            | Martz, (Damage,) 3 <i>Hagg.</i>   | 320.  |
| Maria, (Captors,) 4 <i>C. Rob.</i>  | 348.                            | Mary, (Bottomry, Wages,) 1 <i>Paine's</i> (Amer.) <i>Rep.</i>   | 157. 180. 671.                              |
| — Françoise, Le Bouch, (Droits of Admiralty, Prize,) 6 <i>C. Rob.</i>                       | 282. 297. 300.                  | 55. n. 74. n. 496. n. 497. n.   |   |
|   | 1. 145, 146, 147. 327, 328, 329 | — Ann, (Bottomry, Mortgagees, Wages,) 9 <i>Jur.</i>   | 94.; 10 <i>Jur.</i>                         |
| — v. Hall, (Aliens,) 1 <i>Townt.</i>  | 83. n.                          | 255.; 4 <i>Notes of Cases</i> ,   | 376.  |
| —, Jackson, (Trade with the Enemy,) 5 <i>C. Rob.</i>  | 365.                            | 52. 64. 65. 72. 74.   |   |
|   | 102. 460.                       | 75. 79, 80. 232. 496. 498   |   |
| —, Kilstrom, (Salvage,) <i>Edw.</i>   | 175.                            | —, Ferrier, (Salvage,) 1 <i>Hagg.</i>   | 158.  |
| —, Magdalena, (Contraband, Prize,) <i>Hay &amp; Marriott</i> ,                              | 247. 250.                       | 361. 374. 384. 395  |   |
| — Monsee, (Blockade, Trade with the Enemy,) 6 <i>C. Rob.</i>                                | 201.                            | Mary, Ardlie, (Appeals,) 2 <i>Hagg.</i>   | 27.   |
|   | 45. 463                         | —, Blossie, (Salvage, Salvage mixed,) 1 <i>W. Rob.</i>  | 448. 457.                                   |
| — Paulsen, (Captors, Contraband, Prize,) 1 <i>C. Rob.</i>                                   | 340. 351. 360. 372. 376.        | 374. 409  |   |
|   | 85. 104.                        | —, Crofts, (Prize,) 2 <i>Dodson</i> ,   | 378.  |
| — Powlona, Hemmes, (Costs and Damages,) 6 <i>C. Rob.</i>                                    | 236.                            | —, Folger, (Captors, Cartel, Salvage military,) 5 <i>C. Rob.</i>                                      | 200.  |
|   | 116. 352                        | 82. 96. 348. 401  |   |
|   |                                 | —, Miller, (Appeals, Navigation Laws,) 1 <i>Dodson</i> ,  | 68. 76.                                     |
|   |                                 | 27. 256. 259. 261   |   |
|   |                                 | —, Stewart, (Damage,) 1 <i>W. Rob.</i>  | 244.  |
|   |                                 | 132. 137  |   |
|   |                                 | Maryatt v. Wilson, (Trade with the Enemy,) 1 <i>B. &amp; P.</i>                                       | 430.  |
|   |                                 | 457   |   |
|   |                                 | —, Willson v., (Navigation Laws,) 6 <i>C. Rob.</i>  | 346.  |
|   |                                 | 255. n.   |   |

|   | Page                                       |  | Page   |
|---|--|--|--|
| Mason v. Armitage, (Statutes,) 13 <i>Ves. jun.</i>  | 36.  | Mercurius, Hansen, (Continuity of Voyage, Trade with the Enemy,) <i>Edw.</i>   | 53.  |
| — v. Polhill, (Security for Costs,) 2 <i>Dowl.</i>  | 447  | —, Janssen, (Prize,) 5 <i>C. Rob.</i>  | 127.   |
| <i>P. C.</i> 61.; 1 <i>C. &amp; M.</i> 620.; 3 <i>Tyr.</i>                                    | 595.                                       | —, Meincke, (Contraband,) 1 <i>C. Rob.</i>   | 288.   |
| — v. Sainsbury, (Damage,) 3 <i>Dougl.</i>   | 60.  |  | 109, 110                                     |
| — v. (Ship) Blaireau, (Salvage,) 2 <i>Cranck's</i>  |  | Mercury, (Trade with the Enemy,) 4 <i>C. Rob. App.</i>   |  |
| ( <i>Amer.</i> ) <i>Rep.</i> 240.   | 356. n. 370. n. 371. n.                    | ( <i>A.</i> ) 6.   | 460  |
| Massachusetts, Pritchard, (Owners,) 1 <i>W. Rob.</i>  | 371.                                       | —, Speck, (Further Proof,) 1 <i>Acton</i> ,  | 66.  |
|   | 280, 281                                   |  | 175  |
| Mason, Hassack v., (Ship's Register,) 4 <i>Moore</i> ,  |  | Mestaer v. Atkins, (Liens, Ships, Ship's Register,) 1 <i>Marsh.</i>  | 76.; 5 <i>Taunt.</i> 381.                    |
| 361.  | 419  |  | 211. 417. n. 419                             |
| Matchless, Vint, (Damage, Evidence, National Character, Navigation Laws,) 1 <i>Hagg.</i>      | 97.  | — v. Gillespie, (Freight, Navigation Laws,) 11 <i>Ves. jun.</i>  | 621. 625. 636. 642.                          |
| 106.; 10 <i>Jur.</i> 1017.  |  |  | 172. 250. 253                                |
| 102. 127. 139. 150. 151. 153. 154. 156. 235.  |  | Meyer, Gienar v., (Wages,) 2 <i>H. Black.</i>  | 603.   |
| 237. 249. 256. 256. n. 260. 351   | 446  |  | 477  |
| Mathesis, (Attachment,) 8 <i>Jur.</i> 582.; 2 <i>W. Rob.</i>                                  |  | Meyers, Reusse v., (Ship's Register,) 3 <i>Camp.</i>   | 475.   |
| 286.; 3 <i>Notes of Cases</i> , 133.  | 30   |  | 418  |
| Matheson, Durell v., (Security for Costs,) 3 <i>Moore</i> ,                                   |  | Middleton, Hart v., (Liens,) 2 <i>Carr &amp; K.</i>  | 19.  |
| 33.; 8 <i>Taunt.</i> 711.   | 413  |  | 213  |
| Matthews, Exp., (Mortgagees,) 2 <i>Ves.</i> 272.  | 231  | — v. Middleton, (Appeals, Pleadings,) 2 <i>Hagg.</i> (Eccl.) <i>Supp.</i> 140.   | 24. 293                                      |
| Matilda, Rahn, (Head Money,) 1 <i>Dodson</i> ,  | 367.                                       | Miles, Rose v., (Damage, Royal Navy,) 4 <i>M. &amp; S.</i>   | 101.; <i>Sm. Merc. Law.</i> 129. n.          |
|   | 179  |  | 138. 353                                     |
| Mattison, White v., (Wages,) 2 <i>Stark.</i>  | 525.                                       | — v. Williams, (Statutes,) 1 <i>P. Wms.</i> 252.; 10 <i>Mod.</i> 245.; 3 <i>Co. Rep.</i> 83.; <i>Hob.</i> 97. 11 <i>Mod.</i> |  |
| Maud and Pickwell, Lawrence v., (Costs,) 1 <i>Add.</i>  |  |  | 150.   |
| 481.  | 112  | Miller & Symes v. Palmer & Kilby, (Practice,) <i>Curtiss</i> ,   | 545.   |
| Maxwell v. Mayer, (Security for Costs,) 2 <i>Burr.</i>  |  |  | 301  |
| 1026.; 1 <i>W. Black.</i> 271.  | 413  | Miller v. Brant, (Wages,) 2 <i>Camp.</i> 580.; <i>Abb. Sh.</i>   |  |
| May, Cox v., (Salvage military,) 4 <i>M. &amp; S.</i>   | 152.                                       |  | 176. 649.                                    |
|   | 407  | —, King in his Office of Admiralty v., (Colours, Practice,) 1 <i>Hagg.</i>   | 197.   |
| Mayer, Maxwell v., (Security for Costs,) 2 <i>Burr.</i>                                       |  |  | 99. 301                                      |
| 1026.; 1 <i>W. Black.</i> 271.  | 413  | — v. Shephard and others, (Evidence,) 2 <i>Lee</i> ,   |  |
| Maylor, Mackenzie v., (Prize,) 4 <i>Dougl.</i>  | 3.   |  | 520.   |
| Mayor of Lyons v. The E. I. Company, (Aliens,) 1 <i>Moore</i> ,                               | 175.                                       |  | 156  |
|   | 11   | Miller, Vanderplank v., (Damage,) <i>M. &amp; M.</i>   | 169.   |
| —, (Lord,) Smith v., (Prohibitions,) 6 <i>Mod.</i>  |  |  | 126  |
| 78.   | 344  | —, Wilson v., (Cargo,) 2 <i>Stark.</i>   | 1.   |
| Meaburn, Cannan and others v., (Owners,) <i>Abb. Sh.</i>                                      |  |  | 93. n.                                       |
| 400.; 1 <i>Bing.</i> 465.   | 275  | Millie, Thomson v., (Wages,) 13 <i>F. C.</i> 560. <i>Mor.</i> ;  |  |
| Meade, Chandler v., (Wages,) 2 <i>Ld. Raym.</i>   | 1211.                                      | <i>No. 4. App.</i>   | 481. n.                                      |
|   | 480. n.                                    | Milligan, Hillier v., (Evidence, Proctors,) 1 <i>Lee</i> ,   |  |
| Meadows, Lovell v., (Security for Costs,) <i>Mur. &amp; H.</i>                                | 45.  |  | 532.   |
|   | 412  | — v. Wedge, (Owners,) 12 <i>Ad. &amp; E.</i> 737.;   |  |
| —, Ratchford v., (Navigation Laws,) 3 <i>Esp.</i>   |  |  | 4 <i>Per. &amp; E.</i> 714.                  |
| 69.   | 253  | Mills and another v. Gregory and another, (Wages,) <i>Sayer</i> ,  | 127.   |
| Mears, Wagner v., (Paupers,) 2 <i>Hagg.</i> (Eccl.)   | 531.                                       |  | 472  |
|   | 282  | —, Bergstrom v., (Freight, Wages,) 3 <i>Esp.</i>   | 37.  |
| Medeiros v. Hill, (Blockade,) 8 <i>Bing.</i> 231.; <i>Abb. Sh.</i>                            | 601.                                       |  | 168. 481                                     |
|   | 41. 48                                     | — v. Long, (Wages,) 1 <i>Sayer's Rep.</i>  | 136.   |
| Medora, (Salvage,) 2 <i>W. Rob.</i>   | 69.  |  | 475  |
| Meg Merrilies, (Salvage,) 3 <i>Hagg.</i> 346. n.  |  | Milner, Brown v., (Wages,) 7 <i>Taunt.</i> 319.; 1 <i>Moore</i> ,  |  |
|   | 356. 385                                   |  | 65.; <i>Abb. Sh.</i> 663.                    |
| Melomane, Colas, (Captors, Droits of Admiralty, Prize,) 5 <i>C. Rob.</i>                      | 41.  |  | 481. 484                                     |
|   | 83. 84. 147. 327. 329                      | Minchin v. Minchin, (Security for Costs,) 1 <i>Price's P. C.</i>   | 159.   |
| Mellona, (Damage, Pleadings,) 10 <i>Jur.</i>  | 993.                                       |  | 414  |
|   | 138. 293                                   | —, Wilson v., (Security for Costs,) 1 <i>Dowl.</i>   |  |
| Mender, Gibbon v., (Freight,) 2 <i>B. &amp; A.</i>  | 17.  |  | 299.; 2 <i>C. J.</i> 87.; 2 <i>Tyr.</i> 166. |
| Menetone v. Gibbons, (Admiralty, Bottomry,) 3 <i>T. R.</i>                                    | 267. 269.; <i>Dougl.</i> 103.              |  | 414  |
|   | 4. 52. 56                                  | Mincomar v. Burdett, (Security for Costs,) <i>Cowp.</i>  |  |
| Mennett v. Bonham, (Licences,) 15 <i>East</i> ,   | 477. 199                                   |  | 158.   |
| Mentor, (Wages,) 4 <i>Mason's</i> ( <i>Amer.</i> ) <i>Rep.</i>                                | 84.  | Minerva, (Affidavits,) <i>Hay &amp; Marriott</i> ,   | 235.   |
|   | 487. n. 488. n.                            |  | 9  |
| —, Campbell, (Captors, Costs,) 1 <i>C. Rob.</i>   |  | —, Andaulle, (Trade with the Enemy,) 3 <i>C. Rob.</i>  | 229  |
| 179.  | 1. 87. 116. 212                            |  | 102. 459                                     |
| —, Whitney, (Blockade,) 1 <i>Acton</i> ,  | 60.  | —, Bell, (Mariner's Contracts, Wages,) 1 <i>Hagg.</i>  | 347. 352. 357. 363. 368.                     |
| —, Williams, (Blockade,) <i>Edw.</i>  | 207.                                       |  | 3. 214. 217. 218. 219. 486. 491              |
|   | 43. 469                                    | —, Crawford, (Bottomry, Practice, Security for Costs,) 1 <i>W. Rob.</i>  | 169. 171.                                    |
| Merac, Timson v., (Licences,) 9 <i>East</i> ,   | 35.  |  | 10. 79. 304. 411                             |
| Mercurius, Gerdes, (Blockade, Capture, Droits of Admiralty, Masters, Prize,) 1 <i>C. Rob.</i> | 81.  | —, Dale, (Wages,) 1 <i>Hagg.</i>   | 54. 58.                                      |
|   | 1. 38. 47. 85. 93. 145. 222. 223. 328. 352 |  | 487.   |
|   |  | —, Davidson, (Licences,) <i>Edw.</i>   | 375.   |
|   |  | —, Glen, (Joint Capture,) 2 <i>Acton</i> ,   | 112.   |
|   |  |  | 192  |

|   |  |
|---|--|
| Minnerva, Henrickson, (Contraband,) 2 C. Rob.   | 302.   |
| —, Knuttell, (Title,) 6 C. Rob.   | 396. 454   |
| —, Kickstock, (Colours,) 3 C. Rob.  | 34. 99   |
| Minna, Traab, (Trade with the Enemy,) Edw.  | 53. 463  |
| Minstrell, Arckcoll, (Wages,) 2 Hagg.   | 40. 503  |
| Mitchell Duncan, (Lord) v., (Flag Share,) 4 M. & S.   | 105. 162   |
| —, Raisin v., (Damage,) 9 C. & P.   | 613. 126   |
| —, Rait v., (Material Men,) 4 Camp.   | 146. 226   |
| — v. Rodney, (in error,) (Prize,) 2 Bro.  | 423. 313   |
| Moates, Thacker v., (Material Men,) 1 M. & Rob.   | 79. ; Abb. Sh. 139.; Sm. Merc. Law. 406. 229   |
| Moita, Bennet v., (Owners,) 7 Taunt. 250.; 1 Moore,   | 4.; Holt, 359. 277   |
| Moline, Anthony v., (Licences,) 5 Taunt.  | 711. 207   |
| Molly, Eadie, (Evidence, Title,) 1 Dodson,  | 395. 151. 455. 466   |
| Mons, Glass, (Wages,) 1 W. Rob.   | 137. 473   |
| Monarch, Bell, (Damage, Practice,) 1 W. Rob.  | 21. 25. 125. 306. 351  |
| Monkwearmouth, (Salvage,) 9 Jur.  | 72. 374  |
| Montefiore v. Montefiore, (Allegations,) 2 Add.   | 355. 16  |
| Montgomery, Huggett v., (Damage, Royal Navy,) 2 N. & R.   | 446. 138. 353  |
| Moor v. Adam, (Costs,) 5 M. & S.  | 156. 114   |
| Moore v. Darell & Budd, (National Character,) 4 Hagg. (Eccl.)                                   | 352. 236, 237  |
| Moorhouse, Andrew v., (Freight,) 5 Taunt.   | 435.; 1 Marsh. 122. 165  |
| Moorsom v. Greaves, (Freight,) 2 Cowp.  | 627. 168   |
| — v. Moorsom, (Pleadings,) 3 Hagg. (Eccl.)  | 97. 291  |
| More v. Rowbotham, (Owners,) 6 Mod.   | 162. 269   |
| Moreton, Hook v., (Wages,) Ld. Raym.  | 398. 472   |
| Moretrie, Murray v., (Damage personal,) 6 C. & P.   | 471.; Abb. Sh. 380. 142  |
| Morgan, Baxter v., (Security for Costs,) 8 Marsh.   | 80.; 6 Taunt. 379. 412   |
| — v. Hopkins, (Answers,) 2 Phil.  | 582. 585. 21   |
| — v. Oswald, (Licences,) 3 Taunt.   | 554. 197. 199. 203   |
| Morley, Taylor v., (Practice,) 1 Curteis,   | 481. 303   |
| Mornington, Ricketts v., (Contempt,) 7 Sim.   | 200. 101   |
| Morraugh v. Comyns, (Prize,) 1 Wils.  | 211. 332   |
| Morris, Robinson v., (Licences,) 5 Taunt.   | 730. 199. 208  |
| Morrison, Henley & Dudderidge v., (Appeals, Prac-   | tice, Wages,) 2 Hagg. (Eccl.) Suppl. 147. 23. 305. 502                                       |
| Morse v. Morse, (Pleadings, Witnesses,) 2 Hagg.   | (Eccl.) 608. 294. 506  |
| —, Taylor v., (Paupers,) 3 Hagg. (Eccl.)  | 179. 282   |
| Morshead, Daubuz v., (Aliens,) 6 Taunt.   | 332. 15  |
| Motion on a ship unknown, (Attachment,) 1 C.  | Rob. 831. 29   |
| Mott & French, Wyllie v., (Answers, Contempt,   | Witnesses,) 1 Hagg. (Eccl.) 33. 21. 101. 509   |
| Moulton and others, Hayman and others v., (Title),  | 5 Esp. 54. 65.; Abb. Sh. 20. 453. 454  |
| Mouncey, Nicholson v., (Damage, Royal Navy,) 15 East.   | 384. 138. 353  |
| Mount, Hillyard v., (Wages,) 3 Car. & P.  | 193. 486   |
| — v. Larkins, (Costs,) 8 Bing.  | 195.; 1 M. & Scott, 357.; 1 Dowl. P.C. 262. 113  |
| Mountaineer, Heaton, (Salvage,) 2 W. Rob.   | 7. 366. 379  |
| Mulgrave, (Salvage,) 2 W. Rob.  | 179.; 7 Jur. 756.; 2 Notes of Cases, 413. 370  |
| —, Garbutt, (Salvage,) 2 Hagg.  | 77. 370  |
| Muller v. Gernon, (Freight,) 3 Taunt.   | 394. 170   |
| Munnings, Atwood v., (Agents,) 7 B. & C.  | 278.; 1 M. & R. 66. 10   |
| Munro v. Douglas, (National Character,) 5 Mod.  | 879. 257   |
| — v. Munro, (National Character,) 7 Clark,  | 842. 236, 237  |
| Murray, Goldie v., (Security for Costs,) 2 Curteis,   | 797. 411   |
| — v. Moretrie, (Damage personal,) 6 C. & P.   | 471.; Abb. Sh. 380. 142  |
| —, Stringer v., (Navigation Laws,) 2 B. & A.  | 248. 250   |
| Mynn v. Robinson and others, (Allegations, Plead-   | ings, Proctors, Witnesses,) 1 Hagg. (Eccl.) 69.; 2 Hagg. (Eccl.) 175. 195. 19. 294. 342. 506 |
| Myrick, Still v., (Wages,) 2 Camp.  | 317. 479   |
| N.  |  |
| Name unknown and two others, (Prize Agents,) 1 Hagg.  | 305. 339   |
| Nancy, Hurd, (Blockade,) 1 Acton,   | 57. 38, 39   |
| —, Joy, (Trade with the Enemy,) 3 C. Rob.   | 82. 459. n.  |
| —, Knudson, (Contraband, Joint Capture,) 3 C. Rob.  | 122.; 4 C. Rob. 327. 108. 191  |
| —, Thompson et al. v., (Wages,) Bee's (Amer.)   | Rep. 217. 1477. n.   |
| —, Viall, (Prize, Slave Trade,) 2 Acton,  | 4. 322. 427  |
| —, Woodberry, (Blockade,) 1 Acton,  | 63. 39   |
| Napier, Howe v., (Wages,) 4 Burr.   | 1944. 473  |
| Naples Grant, (Blockade, Joint Capture, Prize,) 2 Dudson,                                       | 273. 279. 284. 38. 183. 188. 190. 310  |
| Narcissus, Moulton, (Neutrals,) 4 C. Rob.   | 17. 20. 263  |
| Nash v. Nash, (Pleadings,) 1 Hagg. (Eccl.)  | 40. 293  |
| Nayade, Mertz, (Trade with the Enemy,) 4 C. Rob.  | 250. 458   |
| Naylor v. Joseph, (Security for Costs,) 10 Moore,   | 522. 413   |
| — v. Taylor, (Blockade,) M. & M. 205.; 9 B. & C. 718.; Abb. Sh. 601.; 4 M. & R. 326. 39. 41. 43 |  |
| Neave v. Pratt, (Mariner's Contract, Wages,) 2 N. R.  | 408.; Abb. Sh. 647. 218. 492   |
| Neclanham v. Foljamb and another, (Wages,) 6 Vin.   | Abr. 439. 475. 498   |
| Need v. Need, (Allegations, Pleadings,) 4 Hagg.   | (Eccl.) 266. 272. 16. 294  |
| Negotien Zeevart, (National Character,) 1 C. Rob.   | 112. 244   |



|   | Page   |  | Page                            |
|---|--|--|---------------------------------|
| Nelly, Perrie, (Trade with the Enemy,) 1 <i>C. Rob.</i>                                     | 457  | Nicholas, Campion v. (Wages,) 2 <i>Stru.</i>   | 405.                            |
| 219. n.   | 457  |  | 473. 485                        |
| Nelson, Brown, (Bottomry,) 1 <i>Hagg.</i>   | 169. 175.                                      | Nicholl v. Goodall, (Droits of Admiralty,) 10 <i>Ves.</i>  | 155.                            |
| 179.  | 56. 60. 66. 68, 69, 70. 76                     |  | 117. 147                        |
| (Lord) v. Bridport (Lord,) (Evidence,) 10   |  | Nicholls, Smith v., (Admiralty,) 7 <i>Scott</i> , 147.; 5  |                                 |
| <i>Jur.</i> 871.  | 151. 156                                       | <i>Bingh. N. C.</i> 208.; 7 <i>Dowl. P. C.</i> 282.; 1 <i>Arn.</i>   | 474.                            |
| (Lord) v. Tucker, (in error,) (Flag Share,) 4   |  |  | 8                               |
| <i>East</i> , 258.; 3 <i>B. &amp; P.</i> 257.   | 161, 162                                       | Nicholson v. Mouncey, (Damage, Royal Navy,) 15   |                                 |
| —, Main, (Admiralty, Owners, Pilots,) 6 <i>C. Rob.</i>                                      | 227. 231.                                      | <i>East</i> , 384.   | 138. 353                        |
| — v. Ogle, (Security for Costs,) 2 <i>Tauxt.</i>  | 259.   | Nicolaas, Witzzen, (Salvage,) 3 <i>Hagg.</i>   | 369.                            |
|   | 411  |  | 369. 394                        |
| Nemesis, Quick, (Captors, Navigation Laws,) 50.   | 89. 255  | Nicolina, (Salvage,) 2 <i>W. Rob.</i>  | 175.                            |
| Neptune, Clark, (Mariners, Salvage, Wages,) 1   |  |  | 382. 390. 398                   |
| <i>Hagg.</i> 227. 236. 239.   | 215. 360. 471. 483, 484, 485. 497              | Nicoline, Nielson, (Licences,) <i>Edw.</i>   | 364.                            |
| —, Cumberlege, (Material Men, Mortgagees, Possession, Practice, Ships,) 3 <i>Hagg.</i>      | 129. 132.                                      | Nied Elwyn, Niess, (Bail, Prize,) 1 <i>Dodson</i> , 507.   |                                 |
| 136. 139.; 3 <i>Kaapp.</i> 94.  | 3. 194. 225, 226, 227. 230. 232. 299. 301. 416 |  | 53.                             |
| —, Friecker, (Salvage,) 1 <i>W. Rob.</i>  | 297. 305.                                      | Nimrod, (Ship,) Wood et al. v., (Wages,) <i>Gilpin's</i>   | (Amer.) <i>Rep.</i> 83.         |
| — the Second, (Damage, Evidence, Owners,) 1   |  |  | 33. 34. 333                     |
| <i>Dodson</i> , 467.  | 136. 151. 276                                  | Ninth of June, (Navigation Laws,) <i>Hay &amp; Marriott</i> , 18.  | 261                             |
| Neptunus, Bachman, (Contraband, National Character, Trade with the Enemy,) 6 <i>C. Rob.</i> | 409.   | Nisbet (Lady) v. Nisbet (Sir J.), (National Character,) 12 <i>S.</i>                                       | 293.                            |
|   | 105. 109. 110. 246. 457                        |  | 241. n.                         |
| —, Hempel, (Blockade,) 2 <i>C. Rob.</i>   | 111.   | — (Sir J.) Trustees, Nisbet (Lady) v., (National Character,) 12 <i>S.</i>                                  | 293.                            |
|   | 41. 43. 48                                     |  | 241. n.                         |
| —, Kuyp, (Blockade,) 1 <i>C. Rob.</i>   | 171.; 3 <i>C. Rob.</i> 173.                    | Noble, Price v., (Average, Prize,) 4 <i>Tauxt.</i>   | 123.;                           |
| —, Lampe, (Contraband,) 3 <i>C. Rob.</i>  | 108.   | <i>Abb. Sh.</i> 479.   | 32. 332                         |
|   | 106. 110                                       | —, Usparicha v., (Aliens, Licences, National Character,) 13 <i>East</i> , 332. 340.; 1 <i>Hale</i> , 165.; |                                 |
| —, Moswold, (Prize,) 3 <i>C. Rob.</i>   | 80.  | <i>Dyer</i> , 144 a.   | 15. 196. 235                    |
| Nereide, (Contraband, Unlivery and Appraisement,) 9   |  | Noidstrom, Bowcher v., (Owners,) 1 <i>Tauxt.</i>   | 568.                            |
| <i>Cranch's</i> (Amer.) <i>Rep.</i> 388.  | 110. n. 469. n.                                |  | 272. 276. 279                   |
| Nesbitt, Brandon v., (Aliens,) 6 <i>T. R.</i>   | 23. 12, 13                                     | Nordstern, Samsing, (Joint Capture,) 1 <i>Acton</i> , 128.   | 188                             |
| Neustra Senhora de los Dolores, Morales, (Claimants,) <i>Edw.</i>                           | 60.  | Norstedt, Attorney-General v., (Navigation Laws, Practice, Title,) 3 <i>Price</i> , 97.                    | 109.                            |
| Neutralitet, Burning, (Contraband,) 3 <i>C. Rob.</i>  | 295.   |  | 261. 302. 451                   |
|   | 109. 110                                       | North, Land v., (Aliens,) 4 <i>Dougl.</i>  | 266.                            |
| —, Zeerver, (Blockade,) 6 <i>C. Rob.</i>  | 30.  |  | 15                              |
| 34.   | 42. 44   | Nossa Senhora da Adjuda, Aranzo, (Blockade, Further Proof, Prize,) 5 <i>C. Rob.</i>                        | 52.                             |
| New Adventure, (Trade with the Enemy,) 4 <i>C. Rob.</i>                                     |  |  | 48. 174. 325                    |
| <i>App. A.</i> 4. n.  | 459  | Nostra de Conceicas, Cunlis, (Ameliorations,) 5 <i>C. Rob.</i>   | 294.                            |
| Newark, Cupper v., (Witnesses,) 2 <i>Car. &amp; K.</i>                                      | 24.  |  | 18                              |
|   | 505  | — Senhora de Bengona, Ybriniga, (Contraband,) 5 <i>C. Rob.</i>   | 97.                             |
| New Brunswick, Magnus Bruce, (Bottomry,) 1 <i>W. Rob.</i>                                   | 28.  |  | 106                             |
| — Draper, Walker, (Possession, Practice, Title,) 4 <i>C. Rob.</i>                           | 287. 291.                                      | — Senora de los Dolores, Morales, (Captors, Owners, Wreck,) 1 <i>Dodson</i> , 296.                         | 299.                            |
| — Eagle, (Material Men, Mortgagees, Ships,) 10  |  |  | 14. 88. 163. 268. 270. 448. 514 |
| <i>Jur.</i> 623.; 4 <i>Notes of Cases</i> , 426.  | 227.   | Nostra Signora de Cabadonga, (Prize,) 6 <i>C. Rob.</i>   | 305.                            |
| Newland v. Horseman, (Admiralty,) 1 <i>Vern.</i>  | 21.  |  | 330                             |
|   | 2  | — del Carmen, otherwise Le Metis, Alesandro, (Prize,) 6 <i>C. Rob.</i>                                     | 302. 302.                       |
| Newman v. Cazalet, (Bottomry,) 2 <i>Park on Ins.</i>  | 565. 898.                                      |  | 329. 330                        |
|   | 76. n.   | — de los Angeles, Saragossa, (Prize, Restitution,) 3 <i>C. Rob.</i>  | 287.                            |
| — v. Walters, (Salvage,) 3 <i>B. &amp; P.</i>   | 612.;  |  | 316. 352                        |
| <i>Abb. Sh.</i> 560.  | 360  | — de los Dolores, Castaner, (Joint Capture,) 1 <i>Acton</i> , 262.   | 186                             |
| Newnham, Da Costa v., (Average,) 2 <i>T. R.</i>   | 407.   |  | 186                             |
|   | 32   | — del Rosario, Martinez, (Prize,) 3 <i>C. Rob.</i>   | 10.                             |
| —, Feize v., (Licences,) 16 <i>East</i> , 197.  | 198. 208                                       |  | 323                             |
| New Phoenix, (Wages,) 2 <i>Chitty's Gen. Prac.</i>  | 524.   | — de Piedade Nova Aurora, Coelho, (Prize,) 6 <i>C. Rob.</i>  | 41.                             |
|   | 495  |  | 320                             |
| —, Barton, (Wages,) 2 <i>Hagg.</i>  | 420.   | Notley v. Cosena, (Prohibition,) 1 <i>T. R.</i>  | 552.                            |
|   | 487  |  | 345                             |
| —, Lewinwaite, (Wages,) 1 <i>Hagg.</i>  | 198.   | Nowell, Kirk v., (Statutes,) 1 <i>T. R.</i>  | 125.                            |
|   | 495, 496. 502                                  |  | 448                             |

O.

|   |                   |  |                      |
|---|-------------------|--|----------------------|
| Obicini v. Bligh, (Admiralty, Prize Agents,) 1 <i>M. &amp; Scott</i> , 477, 478.; | <i>Bing.</i> 335. | 8.   | 341                  |
| Ocean, (Salvage,) 2 <i>Monthly Law Mag.</i>                                       | 441.              | 361. n.  |                      |
| Ocean, (Bottomry, Material Men,) 9 <i>Jur.</i>                                    | 381.              | 10 <i>Jur.</i> 505.; 4 <i>Notes of Cases</i> , 31. | 410. 571.            |
|   |                   |  | 65. 76. 80. 228. 351 |

|  | Page                    |  | Page |
|--|-------------------------|--|------|
| Ocean, Harmsen, (National Character,) 5 <i>C. Rob.</i>                           | 239                     | Oxenden v. Cropper, (Security for Costs,) 4 <i>Dowl.</i> | 411  |
| 90.  | 380                     | P. C. 574.   | 411  |
| —, Martin, (Salvage,) 2 <i>W. Rob.</i> 91.                                       | 45                      | Oxenham v. Gibbs, (Navigation Laws,) <i>Abb. Sh.</i>     | 252  |
| —, Parker, (Blockade,) 3 <i>C. Rob.</i> 297.                                     | 457 ;                   | 54.  | 459  |
| —, Queen, (Material Men,) 1 <i>W. Rob.</i> 1201 ; 1 <i>Notes of Cases</i> , 271. | 228                     | Oxolen, (Trade with the Enemy,) 4 <i>C. Rob. App.</i>    | 4 n. |
| —, Wabourne, (Salvage,) 3 <i>Hagg.</i> 194.                                      | 388                     |  |      |
| —, Witham, (Tenders,) 1 <i>W. Rob.</i> 334.                                      | 449                     |  |      |
| Oddy v. Bovill, (Prize,) 2 <i>East</i> , 473.                                    | 315                     |  |      |
| Odin, Hals, (Trade with the Enemy,) 1 <i>C. Rob.</i>                             | 457                     |  |      |
| 248.   | 325.                    |  |      |
| —, Hals, (Joint Capture,) 4 <i>C. Rob.</i> 318.                                  | 183. 191                |  |      |
| Ogle, Fisher v., (Evidence,) 1 <i>Camp.</i> 418.                                 | 152                     |  |      |
| —, Nelson v., (Security for Costs,) 2 <i>Tawnt.</i> 253.                         | 411                     |  |      |
| Ohio, (Steamboat,) Wilson v., (Wages,) <i>Gilpin's</i>                           | 476. n.                 |  |      |
| ( <i>Amer.</i> ) <i>Rep.</i> 505.  | 413                     |  |      |
| O'Laughla v. Macdonald, (Security for Costs,) 3                                  | 252                     |  |      |
| <i>Moore</i> , 77.   | 252                     |  |      |
| Old, Kain v., (Navigation Laws,) 2 <i>B. &amp; C.</i> 627.                       | 217. n.                 |  |      |
| 4 <i>D. &amp; R.</i> 52.   | 408.                    |  |      |
| Oliver et al. v. Alexander et al., (Mariners' Con-                               | 504. n.                 |  |      |
| tracts,) 6 <i>Peter's</i> ( <i>Amer.</i> ) <i>Rep.</i> 143.                      | 20                      |  |      |
| — v. Latham, (Witnesses,) 1 <i>Philips</i> , 408.                                | 35.                     |  |      |
| — and Tuke v. Heathcote, (Answers,) 2 <i>Add.</i>                                | 20                      |  |      |
| 35.  | 235. 237                |  |      |
| O'Mealy v. Wilson and another, (National Cha-                                    | 244. 318                |  |      |
| acter,) <i>N. P.</i> 1 <i>Camp.</i> 482.   | 245. n.                 |  |      |
| Omnibus, Fennes, (National Character, Prize,) 6                                  | 410                     |  |      |
| <i>C. Rob.</i> 71.   | 324                     |  |      |
| O'Neale v. Cordes and Gronemeyer, (National Cha-                                 | 473                     |  |      |
| acter,) 13 <i>F. C.</i> 221 ; <i>Moore</i> , No. 2. <i>App.</i>                  | 45.                     |  |      |
|  | 125. n. 132. n.         |  |      |
| Onge v. Truelock, (Security for Costs,) 1 <i>Beat.</i>                           | 75. 77. n. 85.          |  |      |
| 341.   | 55. 62. 66. 74. 80      |  |      |
| Ooster, Eems, (Prize,) 1 <i>C. Rob.</i> 284. n.                                  | 441                     |  |      |
| Opy v. Child, (Wages,) 1 <i>Salk.</i> 31.  | 160                     |  |      |
| Oratava, (Damage,) 5 <i>Monthly Law Mag.</i> 45.                                 | 147. 175                |  |      |
|  | 122. n. 345. 346        |  |      |
| Orelia, Hudson, (Bottomry,) 3 <i>Hagg.</i> 75. 77. n. 85.                        | 215. n. 272. n.         |  |      |
|  | 483. n. 493. n. 495. n. |  |      |
| Orestes, (Slave Trade,) 2 <i>Hagg.</i> 38. n.                                    | 430.                    |  |      |
| Orion, Cushing, (Flag Share,) 4 <i>C. Rob.</i> 302.                              | 106                     |  |      |
| —, Petersen, (Droits of Admiralty, Further                                       | 23.                     |  |      |
| Proof,) 1 <i>Acton</i> , 205.  | 414                     |  |      |
| Ormsley, Velthasan v., (Damage, Prohibition,) 3                                  |                         |  |      |
| <i>T. R.</i> 315.  |                         |  |      |
| Orne v. Townsend, (Mariners, Owners, Wages,) 4                                   |                         |  |      |
| <i>Mason's</i> ( <i>Amer.</i> ) <i>Rep.</i> 541.                                 |                         |  |      |
|  |                         |  |      |
| Orozembo, Brewster, (Contraband,) 6 <i>C. Rob.</i> 430.                          |                         |  |      |
|  |                         |  |      |
| Orr v. Bowles, (Security for Costs,) 1 <i>Hodges</i> , 23.                       |                         |  |      |
|  |                         |  |      |
| Oscar, Lofgren, (Salvage,) 2 <i>Hagg.</i> 257. 261.                              |                         |  |      |
|  |                         |  |      |
| 351. 376. 388. 390. 398. 467   |                         |  |      |
| Osiris, Shaken, (Affidavits, Salvage,) 2 <i>Hagg.</i> 135.                       |                         |  |      |
|  |                         |  |      |
| 9. 397   |                         |  |      |
| Osmond, Wells v., (Wages,) 6 <i>Mod.</i> 238 ; 2 <i>Ld.</i>                      |                         |  |      |
| <i>Raym.</i> 1044.   |                         |  |      |
| Ospray, (National Character, Trade with the                                      |                         |  |      |
| Enemy,) 1 <i>C. Rob.</i> 14.   |                         |  |      |
| Oster, Risoer, Jurgensen, (Contraband, Freight,) 4                               |                         |  |      |
| <i>C. Rob.</i> 199.  |                         |  |      |
| Oswald, Morgan v., (Licences,) 3 <i>Tawnt.</i> 554.                              |                         |  |      |
|  |                         |  |      |
| 197. 199. 203  |                         |  |      |
| Ouston v. Hebden, (Owners,) 1 <i>Wils.</i> 101.                                  |                         |  |      |
| Owen v. Flack, (Evidence,) 2 <i>Sim. &amp; Stu.</i> 606.                         |                         |  |      |
|  |                         |  |      |
| 152  |                         |  |      |
| Packet, (Bottomry, Masters,) 3 <i>Mason's</i> ( <i>Amer.</i> )                   |                         |  |      |
| <i>Rep.</i> 255.   |                         |  |      |
| 58. n. 72. n. 73. n. 78. n. 244. n.  |                         |  |      |
| De Bilbao, Dupucheta, (National Cha-   |                         |  |      |
| acter,) 2 <i>C. Rob.</i> 183.  |                         |  |      |
| Page, Blight v., (Freight,) 3 <i>B. &amp; P.</i> 295. n.                         |                         |  |      |
| 166  |                         |  |      |
| Paisley, (Navigation Laws,) <i>Jackways, Edw. App.</i>                           |                         |  |      |
| E.   |                         |  |      |
| 259. 260   |                         |  |      |
| Palmer, Fraser v., (Security for Costs,) 3 <i>Jur.</i> 145.                      |                         |  |      |
|  |                         |  |      |
| 414  |                         |  |      |
| — v. Gooch, (Material Men,) 2 <i>Stark.</i> 428.                                 |                         |  |      |
|  |                         |  |      |
| 229  |                         |  |      |
| — and Kilby, Millar and Symes v., (Practice,) 1                                  |                         |  |      |
| <i>Curtis</i> , 545.   |                         |  |      |
| 301  |                         |  |      |
| — v. Pope, (Prohibition,) <i>Hob.</i> 79. 213.                                   |                         |  |      |
|  |                         |  |      |
| 346  |                         |  |      |
| —, Rex v., (Statutes,) 1 <i>Leach</i> , 352, 355 ; 2                             |                         |  |      |
| <i>East</i> , 698.   |                         |  |      |
| 447, 448   |                         |  |      |
| Palsgrave, Eyre v., (Licences,) 2 <i>Camp.</i> 605.                              |                         |  |      |
| 208  |                         |  |      |
| Panda, (Damage, Pirates,) 1 <i>W. Rob.</i> 423. 436.                             |                         |  |      |
|  |                         |  |      |
| 120. 288, 289  |                         |  |      |
| Panton v. Williams, (Practice,) 2 <i>Curtis</i> , 552.                           |                         |  |      |
|  |                         |  |      |
| 305  |                         |  |      |
| Papillon, Le Brit v., (Aliens,) 4 <i>East</i> , 502.                             |                         |  |      |
| 13   |                         |  |      |
| Par v. Evans, (Bail, Prohibition, Wages,) <i>T. Raym.</i>                        |                         |  |      |
| 78 ; 2 <i>Ld. Raym.</i> 1286.  |                         |  |      |
| 34. 345, 473   |                         |  |      |
| Parker, Hunter v., (Navigation Laws, Titles,) 7 <i>M.</i>                        |                         |  |      |
| <i>&amp; W.</i> 322 ; <i>Abb. Sh.</i> 9. 25.                                     |                         |  |      |
| 252. 452, 453  |                         |  |      |
| —, Marshall v., (Evidence,) 2 <i>Camp.</i> 69.                                   |                         |  |      |
|  |                         |  |      |
| 152  |                         |  |      |
| —, v. Toulmin, (Courts, Flag Share,) 1 <i>Cox</i> ,                              |                         |  |      |
| 264.   |                         |  |      |
| 117. 158   |                         |  |      |
| Parkin, Cole v., (Navigation Laws,) 12 <i>East</i> , 471.                        |                         |  |      |
|  |                         |  |      |
| 252  |                         |  |      |
| Parkman v. Allen, (Contraband,) 6 <i>C. Rob.</i> 382.                            |                         |  |      |
|  |                         |  |      |
| 108  |                         |  |      |
| Parmeter v. Todhunter, (Bottomry,) 1 <i>Camp.</i> 541.                           |                         |  |      |
|  |                         |  |      |
| 57. 65   |                         |  |      |
| Parquot v. Elling, (Security for Costs,) 1 <i>H. Black.</i>                      |                         |  |      |
| 106.   |                         |  |      |
| 412  |                         |  |      |
| Parry, Deffis v., (Licences,) 3 <i>B. &amp; P.</i> 3.                            |                         |  |      |
| 198  |                         |  |      |
| Parslow v. Dearlere, (Statutes,) 4 <i>East</i> , 438.                            |                         |  |      |
| 447  |                         |  |      |
| Parsons v. Pitcher, (Costs,) 6 <i>Dowl.</i> 600 ; 6 <i>Scott</i> ,               |                         |  |      |
| 298.   |                         |  |      |
| 112  |                         |  |      |
| — v. Scott, (Ransom,) 2 <i>Tawnt.</i> 363.                                       |                         |  |      |
| 347  |                         |  |      |
| Partridge, Betham, (Bail, Possession,) 1 <i>Hagg.</i> 82.                        |                         |  |      |
|  |                         |  |      |
| 34. 298, 299   |                         |  |      |
| Patapseo, Hall, (Trade with the Enemy,) 1 <i>Acton</i> ,                         |                         |  |      |
| 270.   |                         |  |      |
| 461  |                         |  |      |
| Paterson v. Hardacre, (Trade with the Enemy,) 4                                  |                         |  |      |
| <i>Tawnt.</i> 115.   |                         |  |      |
| 456  |                         |  |      |
| Pattison v. Banks, (Statutes,) <i>Cowp.</i> 543.                                 |                         |  |      |
| 447  |                         |  |      |
| —, Willison v., (Aliens, Title,) 7 <i>Tawnt.</i> 439 ;                           |                         |  |      |
| 1 <i>Moore</i> , 133.  |                         |  |      |
| 14. 457  |                         |  |      |
| Paul v. Eden, (Wages,) <i>Abb. Sh.</i> 450. 630 ; 6 <i>T.</i>                    |                         |  |      |
| <i>R.</i> 325. n.  |                         |  |      |
| 480  |                         |  |      |
| Paulet, (Lord,) Taylor v., (Flag Share,) 1 <i>H. Black.</i>                      |                         |  |      |
| 264. n.  |                         |  |      |
| 159  |                         |  |      |
| Pauline, (Wreck,) 2 <i>W. Rob.</i> 358 ; 9 <i>Jur.</i> 286 ;                     |                         |  |      |
| 3 <i>Notes of Cases</i> , 616.   |                         |  |      |
| 512  |                         |  |      |
| —, Regina v., (Admiralty, Wreck,) 9 <i>Jur.</i>                                  |                         |  |      |
| 286 ; 2 <i>W. Rob.</i> 363.  |                         |  |      |
| 4. 515   |                         |  |      |

# TABLE OF CASES.

lxxv

|   |   |               |
|---|---|---------------|
| Payne, Lister v., (Navigation Laws,) 11 Sim.                                    | 348.                                      | Page          |
| Abb. Sh. 78.  | 253                                       |               |
| Peach, Baldwin v., (Limitations,) 1 Yo. & Coll.                                 | 153.                                      |               |
|   | 212                                       |               |
| Pearson, Crofts, (Captors,) 4 C. Rob.   | 185.                                      | 90            |
| Pearl, Denton, (Wages,) 5 C. Rob.   | 224.                                      | 490           |
| Pearn v. Green, (Prize Agents,) 1 Jac. & W.                                     | 135.                                      | 339           |
| Pearse v. Green, (Captors,) 1 J. & W.   | 135.                                      | 88            |
| Pearson, Faith v., (Prize,) 2 Marsh.  | 133.                                      | 6             |
| Tunst. 439.; 4 Corp. 357.; Holt, 113.   | 313                                       |               |
| —, Le Cheminant v., (Licences, National Character,) 4 Tunst.                    | 367.                                      | 203. 242. 418 |
| —, Reynier v., (Evidence,) 4 Tunst.   | 662.                                      | 153           |
| — and another, Fenton and another v., (Stoppage in Transitu,) 51 East,          | 419.; Abb. Sh. 517.                       | 446           |
| —, Speer et al. v., (Wages,) 1 Mason's (Amer.) Rep.                             | 104.                                      | 495. n.       |
| Peddle v. Evans, (Proctors,) 3 Hagg. (Eccl.)                                    | 687.                                      | 342, 343, 344 |
| — v. Toller, (Proctors,) 3 Hagg. (Eccl.)  | 297.                                      | 342, 343      |
| Peggy, Finlay, (Bail, Possession,) 4 C. Rob.                                    | 304.                                      | 34. 299       |
| Pelaye's Case, (Possession,) Bulst.   | 327.; 4 Ins.                              | 152. 288. n.  |
| Pelican, Burke, (National Character,) Edw. App. D.                              |   | 234           |
| —, Moodie, (Navigation Laws,) 2 Dodson,   | 194.                                      | 250. 255      |
| Pensamento Felix, Megalhaens, (Salvage military) Edw. 115.                      |   | 402           |
| Pensylvania, M'Pherson, (Prize,) 1 Acton,                                       | 33.                                       | 321           |
| Percy, Tanner, (Bottomry,) 3 Hagg.  | 402.                                      | 72            |
| Pere, Adam, (Aliens,) Hay & Marriott,   | 141.                                      | 13            |
| Perry, Curteis v., (Navigation Laws,) 6 Ves. jun.                               | 739.                                      | 250           |
| —, King v., (Bail, Bottomry,) 3 Salk.   | 23.                                       | 34. 52        |
| Perserance, Pittor, (Ameliorations,) 2 C. Rob.                                  |   | 239. 19       |
| Persian, (Unlivery and Appraisement,) 1 W. Rob.                                 |   | 327. 467      |
| Perth, Spink, (Damage, Salvage,) 3 Hagg.  | 415.                                      | 133. 136. 385 |
| Peter v. Kendall, (Customs and Usages,) 6 B. & C.                               | 703.                                      | 121           |
| Petersfield v. the Judith Randolph, (Damage,) Abb. Sh. 231.                     |   | 125           |
| Peto v. Hague, (Evidence,) 3 Esp. 134.; 1 Smith,                                | 417.                                      | 154           |
| Petrel, Russell, (Attachment, Contempt,) 3 Hagg.                                | 229. 304.                                 | 29. 101       |
| Philips v. Philips, (Pleadings, Practice,) 3 Curteis,                           | 796.                                      | 293. 305      |
| —, Roper v., (Security for Costs,) 3 M. & R.                                    | 84.                                       | 413           |
| —, Tomlinson v., (Admiralty,) 12 Rep. 104.; 6 Vin. Abr. 521.                    |   | 7             |
| Phoenix, Susini, (National Character, Trade with the Enemy,) 3 C. Rob.          | 186.                                      | 241. 459      |
| —, Wildeber, (National Character,) 5 C. Rob.                                    |   | 20. 247       |
| Pieimento, Garcia, (Admiralty,) 4 C. Rob.                                       | 360.                                      | 7             |
| Pickersgill, Hoskins v., (Owners,) 1 Park on Ins.                               | 97.; 2 Marsh. on Ins. 735.; 3 Dougl. 223. | 275. n.       |
| Pierse, Sanders v., (Security for Costs,) 1 Tidd's Proc. 580.; 1 Chitt. 267. n. |   | 412           |

|  |                                   |               |
|--|-----------------------------------|---------------|
| Pierson v. Belchier, (Paupers,) 4 Ves.                                       | 630.                              | Page          |
| Piesobell v. Allnutt, (Licences,) 4 Tunst.                                   | 792.                              | 282           |
| — v. Lavie, (Licences,) 4 Tunst.   | 792.                              | 203. 206      |
| Pigot v. White, (Flag Share,) 1 H. Black.                                    | 265.; 4 Dougl. 302.               | 160           |
| Pipon, Benest v., (Crown, Lords of Manors,) 1 Knapp.                         | 60. 67.                           | 119. 213      |
| Piratical Proahs, (Pirates,) 3 Hagg.   | 426.                              | 289           |
| Piratical vessel, name unknown, (Pirates,) 1 W. Rob.                         | 461.                              | 290           |
| Pirie v. Anderson, (Title,) 4 Tunst.   | 652.; 3 Camp.                     | 240. 456      |
| Pitcher, Parsons v., (Costs,) 6 Dougl.                                       | 600.; 6 Scott,                    | 298. 112      |
| Pits, Wharton v., (Prohibition,) 2 Salk.                                     | 548.                              | 346           |
| Pitt, (Witnesses,) 2 Hagg.   | 149. n. 151. n.                   | 505, 506      |
| —, Croese, (Possession,) 1 Hagg.   | 240. 245.                         | 296. 297. 299 |
| —, (in error,) Taylor v., (Prize,) 8 Tunst.                                  | 805.; 11 East, 414.               | 331           |
| Pixtey, Rex v., (Ship's Register,) 13 East,                                  | 91.                               | 419           |
| Planche v. Fletcher, (Navigation Laws,) 1 Dougl.                             | 251.                              | 248           |
| Plantamour v. Staples, (Masters,) 1 T. R.                                    | 611. n.                           | 222           |
| (a).   |                                   | 222           |
| Planters Wensch, Toll, (Licences,) 5 C. Rob.                                 |                                   | 22.           |
| Plaw, Kasten v., (Security for Costs,) 1 M. & P.                             | 30.                               | 197           |
| Player, Hutchins v., (Factors,) Bannister's Rep.                             |                                   | 158. n.       |
| —, King v., (Wages,) 2 Show. 86.; Sir L. Jenkins, 81.; Abb. Sh. 655.         |                                   | 475           |
| Plummer and others, Smith and another v., (Masters, Material Men,) 1 B. & A. | 575.                              | 224. 227      |
| — v. Wildman, (Average,) 3 M. & S.   | 482.; Abb. Sh. 478.               | 32            |
| Plym, (Attachment,) 8 Jur.   | 990.                              | 30            |
| Plymm, (Paupers,) 2 W. Rob.  | 345.                              | 282           |
| Poingdestre v. Royal Exchange Assurance Company, (Damage,) R. & M.           | 378.                              | 127. n.       |
| Poles, Powles, or Coles, M'Alpine v., (Costs,) 1 C. & M.                     | 795.; 3 Tyr. 871.; 2 Dougl. P. C. | 299. 114      |
| Polhill, Mason v., (Security for Costs,) 2 Dougl.                            | 61.; 1 C. & M. 620.; 3 Tyr. 595.  | 412           |
| Pollard v. Bell, (Admiralty, Law of Nations, Neutrals,) 8 T. R.              | 434.; 2 Park on Ins. 731.         | 3. 194. 263   |
| Pollock & Co., Potts v., (Owners,) 15 S.                                     | 879.                              | 273. n.       |
| Polly, (Captors,) 4 C. Rob.  | 217.                              | 83            |
| —, Lashy, (Further Proof,) 2 C. Rob.   | 361.                              | 174. 468      |
| Pomona, Mc Nought, (Prize,) 1 Dodson,  | 25.                               | 310. 332      |
| Poole, Lloyd & Clarke v., (Appeals, Costs,) 3 Hagg. (Eccl.)                  | 477. 482.                         | 23. 24. 115   |
| Pope, Palmer v., (Prohibition,) Hob.   | 79. 213.                          | 346           |
| Popham, Donelly v., (Flag Share,) 1 Tunst.                                   |                                   | 159           |
| Porcher, Faulkner, and Balsemao, Alvez, (Salvage,) 2 Hagg.                   | 270. n.                           | 378           |
| Porcupine, Laing, (Tenders, Wages,) 1 Hagg.                                  | 378.                              | 448. n. 479   |
| Portia, (Salvage, Tenders,) 9 Jur.   | 167.                              | 369. 380. 448 |



## TABLE OF CASES.

lxxvii

|   | Page                  |   | Page                         |
|---|-----------------------|---|------------------------------|
| Rainier, Holmes v., (Flag Share,) 8 <i>East</i> , 502.  | 159, 160              | Reliance, Hays, (Agents, Bottomry,) 3 <i>Hagg.</i>  | 69.                          |
| Raisin v. Mitchel, (Damage,) 9 <i>C. &amp; P.</i> 613.  | 126                   | 74.   | 11. 51. 56. 67               |
| Raitt v. Mitchell, (Material Men,) 4 <i>Camp.</i> 146.  | 226                   | —, Wiley, (Salvage,) 2 <i>Hagg.</i> 90. n.  | 381, 382                     |
| Randers, Bye, (Blockade,) 6 <i>C. Rob.</i> 382.   | 47                    | Rendall v. Randall, (Witnesses,) 3 <i>Curteis</i> , 119.  | 509                          |
| Ranger, (Salvage,) 9 <i>Jur.</i> 119.   | 374                   | Rendsborg, Nyberg, (National Character, Prize, Trade with the Enemy,) 4 <i>C. Rob.</i> 121. 126.  | 238. 240. 263. 323. 461, 462 |
| —, Schooner, Drysdale v., (Wages,) <i>Bee's</i> (Amer.) <i>Rep.</i> 148.  | 493. n.               | —, Nyberg, (Claimants, Marshall,) 6 <i>C. Rob.</i> 142. 155. 161. 168. 174. 176.  | 98.                          |
| —, Smith, (Contraband,) 6 <i>C. Rob.</i> 125.   | 104. 109, 110         | 100. 221. 280   |                              |
| Rapid, Cochrane, (Salvage,) 3 <i>Hagg.</i> 419. 422.  | 356. 372. 385         | Renno v. Bennett, (Wages,) 3 <i>Add. &amp; Ell. N. S.</i> 768.  | 494                          |
| —, Fleming, (Contraband,) <i>Edw.</i> 228.  | 105                   | Repulse, (Wages,) 9 <i>Jur.</i> 739.  | 474                          |
| Ratchford v. Meadows, (Navigation Laws,) 3 <i>Esp.</i> 69.  | 253                   | Resolution, (Contraband,) 4 <i>C. Rob.</i> 166. n.  | 104                          |
| Rattlesnake, Maffet, (Joint Capture,) 2 <i>Dodson</i> , 32.   | 187, 188. 190         | —, Shapleigh, (Captors, Salvage military) 6 <i>C. Rob.</i> 13. 21.  | 83. 86. 266. 402             |
| Rawlins, Desborough v., (Evidence,) 3 <i>Myln. &amp; Cr.</i> 515. 519.  | 155                   | Restitution, Vriendschap, (National Character,) 4 <i>C. Rob.</i> 166.   | 241                          |
| Rawlinson, Buck v., (Wages,) 1 <i>Bro. P. C.</i> 137.; <i>Ab. Sh.</i> 626.  | 486. 499              | Reusse v. Meyers, (Ship's Register,) 3 <i>Camp.</i> 475.  | 418                          |
| — v. Jansen, (Licences, Wages,) 12 <i>East</i> , 223.   | 198. 208. 481         | Revenge, Dia et al. v., (Captors,) 3 <i>Washington's</i> (Amer.) <i>Rep.</i> 262.   | 88. n.                       |
| Raybold v. Raybold, (Witnesses,) 1 <i>Hagg.</i> (Cons.) 98.   | 506                   | Reward, (Salvage military) <i>Hay &amp; Marriott</i> , 222. 226.  | 407. n.                      |
| Raymond v. Baron von Watteville, (Answers, Proctors,) 2 <i>Lee</i> , 495. 499. 551.   | 21. 342               | —, Hogg, (Affidavits, Salvage,) 1 <i>W. Rob.</i> 174.   | 9. 361                       |
| Rayne, Exp., (Owners,) 1 <i>Gals &amp; D.</i> 374.; 5 <i>Jur.</i> 1083.; <i>Abb. Sh.</i> 401.                                       | 276                   | —, Selkirk, (Navigation Laws,) 2 <i>Dodson</i> , 264. 271.  | 249. 259. 264                |
| Reardon, Hill v., (Courts,) 2 <i>S. &amp; S.</i> 431.   | 116                   | Rex v. Bailey, (Captors,) <i>R. &amp; R. C. C.</i> 1. 87  |                              |
| —, (Security for Costs,) 6 <i>Mad.</i> 46.  | 413                   | — v. Barlow, (Statutes,) <i>Salk.</i> 609.; <i>Co. Litt.</i> 391.; 2 <i>Inst.</i> 434.; 3 <i>Inst.</i> 91.; 2 <i>Stra.</i> 828.; 1 <i>T. R.</i> 49. | 345                          |
| Rebecca, (Prize, Trade with the Enemy,) <i>Hay &amp; Marriott</i> , 197.  | 323. 463              | — v. Broom, (Prohibition,) 12 <i>Mod.</i> 194.  | 345                          |
| —, McNeil, (Freight, Trade with the Enemy,) 2 <i>Acton</i> , 119.   | 166. 461              | — v. Carew, (Courts, Letters of Marque,) 3 <i>Swan.</i> 669.; 1 <i>Vern.</i> 54.  | 117. 193                     |
| —, Maddick, (Aliens, Appeals, Bottomry,) 5 <i>C. Rob.</i> 102.  | 13. 22. 52. 79. 348   | — v. Collector and Comptroller of the Customs of London, (Navigation Laws,) 1 <i>M. &amp; S.</i> 262.   | 251. n.                      |
| —, Moore, (Freight,) 2 <i>C. Rob.</i> 102.  | 109. 170              | — v. Keating, (Costs,) 1 <i>Dowl. P. C.</i> 440.  | 113                          |
| Rebeckah, Thompson, (Crown, Droits of Admiralty, Prize,) 1 <i>C. Rob.</i> 229. 233.   | 1. 93.                | — v. Kitto, (Convoy,) 2 <i>Dodson</i> , 57.   | 111                          |
| 120. 145, 146. 329. 410   |                       | — v. Marsh, (Pirates,) 3 <i>Bulst.</i> 27.  | 288. n.                      |
| Recovery, Webb, (Navigation Laws, Prize,) 6 <i>C. Rob.</i> 341. 348.  | 162. 255. n. 257. 319 | — v. Palmer, (Statutes,) 1 <i>Leach</i> , 352. 355.; 2 <i>East</i> , 898.   | 447, 448                     |
| Reed & Harris, Griffith v., (Costs,) 1 <i>Hagg.</i> (Eccl.) 210.  | 112                   | — v. Perry, (Bottomry,) 3 <i>Salk.</i> 23.  | 52                           |
| Rees, Elan v., (Security for Costs,) 3 <i>Dougl.</i> 382.   | 412                   | — v. Pixey, (Ship's Register,) 13 <i>East</i> , 91.   | 419                          |
| Reg. Gen., (Costs,) <i>K. B., C. P., &amp; Exch., Hil. Vac.</i> 4 <i>Will. IV.</i> , (15th March, 1834,) 3 <i>Nev. &amp; M.</i> 18. | 113                   | — v. Sparrow, (Statutes,) 2 <i>Stra.</i> 1123.  | 446                          |
| Regina v. the Pauline, (Admiralty, Wreck,) 9 <i>Jur.</i> 286.; 2 <i>W. Rob.</i> 363.  | 4. 515                | — v. Stevenson, (Statutes,) 2 <i>East</i> , 362.  | 447                          |
| — v. Simpson, (Statutes,) 10 <i>Mod.</i> 248.   | 447                   | — v. Walsh, (Security for Costs,) 1 <i>A. &amp; E.</i> 481.; 3 <i>N. &amp; M.</i> 632.  | 410                          |
| — v. Zulueta, (Slave Trade,) 1 <i>Car. &amp; K.</i> 215.  | 423, 424              | Reyner v. Pearson, (Evidence,) 4 <i>Tauxt.</i> 662.   | 153                          |
| Reid, Bell v., (Trade with the Enemy,) 1 <i>M. &amp; S.</i> 726.  | 457                   | Rhadamanthe Mayer, (Bottomry, Captors,) 1 <i>Dodson</i> , 203. 206.; <i>Abb. Sh.</i> 155.   | 51. 53.                      |
| — v. Bonham, (Title,) 6 <i>Moore</i> , 397.; 3 <i>B. &amp; B.</i> 147.; <i>Abb. Sh.</i> 13.   | 453                   | 57. 59. 71. 74. 75. 94  |                              |
| — v. Darby, (Title,) 10 <i>East</i> , 443.  | 451, 452              | Rhind v. Wilkinson, (Licences,) 2 <i>Tauxt.</i> 237.  | 208                          |
| —, Hagedorn v., (Licences,) 1 <i>M. &amp; S.</i> 567.; 3 <i>Camp.</i> 377.  | 198                   | Rhodes & others, Clement v., (Interveners, Pleadings,) 3 <i>Add.</i> 40.  | 182. 292, 293                |
| —, Rogerson v., (Liens,) 1 <i>Knapp.</i> 363.   | 211                   | Riby Grove, Dean, (Wages,) 2 <i>W. Rob.</i> 52. 59.   | 473. 498                     |
| Reliance, Green, (Wages,) 2 <i>W. Rob.</i> 122.; 7 <i>Jur.</i> 542.; <i>Abb. Sh.</i> 634.   | 484                   | Rice v. Haylett, (Mariners' Contracts,) 3 <i>Car. &amp; P.</i> 534.   | 218                          |
|   |                       | Rich v. Coe, (Material Men,) <i>Cowp.</i> 639.; 1 <i>T. R.</i> 108. n.  | 226                          |
|   |                       | Richards, Young & Smith v., (Evidence,) 2 <i>Curteis</i> , 374.   | 157                          |

|   | Page   |  | Page   |
|---|--|--|--|
| Richardson v. Anderson, (Evidence,) 1 <i>Camp.</i>  | 65. n. 157   | Robinson, Emperor of Brazil v., (Security for Costs,) 6 <i>Ad. &amp; E.</i>                  | 801.; 5 <i>Dowl.</i> 522.; 1 <i>Neu. &amp; P.</i> 807.; <i>W. W. &amp; D.</i> 278. 413 |
| — v. Campbell, (Material Men, Salvage, Wages,) 5 <i>B. &amp; A.</i>                             | 196. 203. n. 226. 368. 496   | — v. Lyall, (Masters,) 7 <i>Price</i> , 592.; <i>Abb. Sh.</i> 139. 224                       |  |
| —, Irving v., (Mortgagees,) 12 <i>B. &amp; Ad.</i>  | 193.; 1 <i>M. &amp; Rob.</i> 153. 233  | — v. Macdonnell, (Navigation Laws,) 5 <i>M. &amp; S.</i>                                     | 228.; 2 <i>B. &amp; A.</i> 134. 252  |
| Richmond, (Damage,) 3 <i>Monthly Law Mag.</i>   | 259. 131. n.   | —, Marsh v., (Ship's Register,) 4 <i>Exp.</i>  | 98. 418  |
| —, Brattel, (Contraband, Prize,) 5 <i>C. Rob.</i>   | 325. 331. 336. 104. 106. 327   | —, Martin v., (Witnesses,) 2 <i>Lee</i> , 397.   | 507  |
| —, West, (Responsibility of Owners,) 3 <i>Hagg.</i>   | 431. 274   | — v. Morris, (Licences,) 5 <i>Taunt.</i>   | 730. 199. 203  |
| Ricketts v. Mornington, (Contempt,) 7; <i>Sim.</i>  | 200. 101   | — v. Touray, (Licences,) 1 <i>M. &amp; S.</i>  | 217.; 3 <i>Camp.</i> 160. 199  |
| Ricord v. Bettenham, (Aliens,) 13 <i>Burr.</i>  | 1734.; <i>S. C.</i> 1 <i>Bl. Rep.</i> 563. 12  | — and others, Mynn v., (Allegations, Pleadings, Proctors, Witnesses,) 1 <i>Hagg. (Eccl.)</i> | 69.; 2 <i>Hagg. (Eccl.)</i> 175. 195. 19. 294. 342. 506                                |
| Ridgway v. Roberts, (Ameliorations, Bottomry, Liens, Owners, Possessions,) 4 <i>Hare</i> , 106. | 20. 59. 210. 268. 299  | Robson, Dutens v., (Prohibition,) 1 <i>H. Black.</i>   | 100. 345   |
| Riera, Jephson v., (Crown, National Character,) 3 <i>Knapp.</i>                                 | 130. 119. 239  | — v. Roche, (Witnesses,) 2 <i>Add.</i>   | 67. 506  |
| Rigden v. Hedges, (Admiralty,) 1 <i>Ld. Raym.</i>   | 446.; 1 <i>Vent.</i> 1.; <i>Sh.</i> 171.; 6 <i>Viner's Ab.</i> 536.; and 12 <i>Mod.</i> 246. 6 | Rocher v. Busher, (Material Men,) 1 <i>Stark.</i>  | 27. 229  |
| Rind v. Davies, (Paupers,) 4 <i>Hagg. (Eccl.)</i>   | 394. 282   | Roche, Robson v., (Witnesses,) 2 <i>Add.</i>   | 67. 506  |
| Ringende, Jacob Kreplien, (Blockade, Contraband, Prize, Trade with the Enemy,) 1 <i>C. Rob.</i> | 91. 41. 106. 109. 110. 463   | Rockwood, Havelock v., (Prize, Ransom, Title,) 8 <i>T. R.</i>                                | 268. 277. 316. 347. 454. 455   |
| Rising Sun, Wilkie, (Freight, Further Proof,) 2 <i>C. Rob.</i>                                  | 104. 108. 170. 176. 322  | Rodney, Lindo v., (Prize,) 2 <i>Dougl.</i>   | 613. n. 312. 313   |
| Ritchie v. Bousfield, (Owners,) 7 <i>Taunt.</i>   | 309.; <i>Abb. Sh.</i> 207. 277   | —, (in error,) Mitchell v., (Prize,) 2 <i>Bro.</i>   | 423. 313   |
| — v. St. Barbe, (Navigation Laws,) 4 <i>Taunt.</i>  | 768. 252   | Rogers v. Lacy, (Wages,) 2 <i>B. &amp; P.</i>  | 57.; 3 <i>Exp.</i> 43. 479   |
| Robert Hale, Randall, (Salvage military) <i>Edw.</i>  | 265. 402   | Rogerson v. Reid, (Liens,) 1 <i>Knapp.</i>   | 363. 211   |
| —, Paterson, (Joint Capture,) 3 <i>C. Rob.</i>  | 194. 184. 186. 191   | Rolla, Coffin, (Blockade,) 6 <i>C. Rob.</i>  | 364. 374. 37. 40. 41. 45   |
| — Thomas, (Blockade,) 1 <i>Acton.</i>   | 62. 42   | Rolleston, Hibbert v., (Navigation Laws,) 2 <i>Bro. C. C.</i>                                | 571.; 3 <i>T. R.</i> 406. 252  |
| Roberts v. Cadd, (Prohibition,) <i>Burb.</i>  | 247. 346   | — v. Smith, (Navigation Laws,) 4 <i>T. R.</i>  | 161. 252   |
| —, Covington v., (Average,) 2 <i>New Rep.</i>   | 378.; 2 <i>Marsh. on Ins.</i> 547. 33  | Romeo, Corran, (Further Proof, Prize,) 6 <i>C. Rob.</i>                                      | 351. 174. 323  |
| — v. Hardy, (Aliens, National Character,) 3 <i>M. &amp; S.</i>                                  | 533.; <i>P. &amp; P.</i> 113.; 1 <i>Camp.</i> 482.; 2 <i>N. R.</i> 97. 13. 236                 | Rookes v. Rookes, (Appeals,) 2 <i>Curteis.</i>   | 350. 24. 26  |
| — v. Hartley, (Prize,) 1 <i>Dougl.</i>  | 311. 381   | Root, White v., (Statutes,) 2 <i>T. R.</i>   | 374. 448   |
| —, Ridgway v., (Ameliorations, Bottomry, Liens, Owners, Possession,) 4 <i>Hare</i> , 106.       | 20. 59. 210. 268. 299  | Roper v. Phillips, (Security for Costs,) 3 <i>M. &amp; R.</i>                                | 84. 413  |
| —, Segard v., (Wages,) 3 <i>Exp.</i>  | 72.; <i>Smith's Merc. Law.</i> 407.; <i>Abb. Sh.</i> 175. 490. 491. 501                        | — v. Roper, (Allegations,) 3 <i>Phill.</i>   | 97. 16   |
| Robertson v. Arnold, (Security for Costs,) 1 <i>Tidd's Prac.</i>                                | 501.; <i>S. P.</i> 1 <i>Chit.</i> 267. n. 412  | Rosalie and Betty, Gebhardt, (Prize,) 2 <i>C. Rob.</i>                                       | 343. 318   |
| — v. Clarke, (Title,) 1 <i>Bing.</i>  | 445. 453   | Rose, Gillmore, (Damage,) 2 <i>W. Rob.</i>   | 4. 132. 135. 136   |
| — v. French, (Title,) 4 <i>East.</i>  | 130. 456   | — in Bloom, Olcott, (Blockade, Neutrals, Prize, Trade with the Enemy,) <i>Dodson.</i>        | 58. 60. 46. 95. 266. 320. 456  |
| — v. Hamilton, (Owners, Restitution,) 14 <i>East.</i>   | 522. 268. 352  | — v. Miles, (Damage, Royal Navy,) 4 <i>M. &amp; S.</i>                                       | 101.; <i>Sm. Merc. Law.</i> 129. n. 138. 353   |
| —, Underwood v., (Title,) 4 <i>Camp.</i>  | 138. 452   | —, Young, (Trade with the Enemy,) 2 <i>C. Rob.</i>   | 206. 459   |
| Robinett v. Ship Exeter, (Mariners, Wages, Witnesses,) 2 <i>C. Rob.</i>                         | 261. 214. 483. 493, 494, 495, 496. 505. n.   | Ross v. Jacques, (Security for Costs,) 2 <i>Mez. &amp; W.</i>                                | 135.; 9 <i>Dowl.</i> 737. 414  |
| Robins v. Wolseley, Sir C., (Witnesses,) 2 <i>Lee</i> , 421.                                    | 506  | — v. Walker, (Admiralty, Pilots, Wages,) 2 <i>Wils.</i>                                      | 264. 5. n. 283. 473. 475, 476  |
| —, Sir W., (Affidavits, Answers, Evidence,) 2 <i>Lee</i> , 54.                                  | 430. 443. 475.; 1 <i>Lee</i> , 620. 9. 20. 156   | Rowbotham, More v., (Owners,) 6 <i>Mod.</i>  | 162. 269   |
| Robinson v. Cheesman, (Licences,) 1 <i>M. &amp; S.</i>  | 230. 199   | Rowcroft, Thompson v., (Wages,) 4 <i>East.</i> , 43.; <i>Abb. Sh.</i>                        | 641. 481. n.   |
|   |  | Rowe et al. v. Brig —, (Derelicts, Salvage,) 1 <i>Mason's (Amer.) Rep.</i>                   | 272. 377. 144. n. 381. n.  |
|   |  | Royal Exchange Insurance Co., Idle v., (Title,) 3 <i>Moore</i> , 115.; 8 <i>Taunt.</i>       | 755.; 3 <i>B. &amp; B.</i> 151.; <i>Abb. Sh.</i> 11./ 453                              |

## TABLE OF CASES.

lxxix

|   | Page                              |   | Page                          |
|---|-----------------------------------|---|-------------------------------|
| Royal Exchange Insurance Co., Loneragan v., (Costs,) 1 <i>Dowl. P. C.</i> 233.; 5 <i>M. &amp; P.</i> 805.; 7 <i>Bing.</i> 729.              | 114                               | Salvador, Devaux v., (Damage,) 4 <i>Ad. &amp; E.</i> 431.; <i>Abb. Sh.</i> 232.   | 125                           |
| —, Poingdestre v., (Damage,) <i>R. &amp; M.</i> 378.  | 127                               | Samson v. Bragington, (Bottomry, Masters,) 1 <i>Ves.</i> 443.; <i>Abb. Sh.</i> 156.   | 64. n. 72. n. 224             |
| —, Thompson v., (Bottomry,) 1 <i>M. &amp; S.</i> 31.; <i>Abb. Sh.</i> 151.  | 63                                | Samuel, (Title,) 4 <i>C. Rob.</i> 284. n.   | 455                           |
| Royal Fischary of the Banne (Crown,) <i>Dav. Rep.</i> 56.; 16 <i>Viner's Abr.</i> 577.  | 119                               | San Antonio, (Flag Share,) 5 <i>C. Rob.</i> 209.  | 161                           |
| Roy, Jesse v., (Wages,) 1 <i>C. M. &amp; R.</i> 316.; 4 <i>Tyr.</i> 626.  | 486                               | — Bernardo, Laretta, (Salvage military) 1 <i>C. Rob.</i> 178.   | 402, 403. 405                 |
| Rubichon v. Humble, (Navigation Laws,) 1 <i>Dow.</i> 191.   | 255. n.                           | — Francesco, Du Paula, (Salvage military,) <i>Edw.</i> 279.   | 406                           |
| Rubicon, (Bottomry,) 3 <i>Hagg.</i> 9. 13.  | 56. 67.                           | — Jose, De Sota, (Evidence, Joint Capture, Witnesses,) 6 <i>C. Rob.</i> 244. 249. 269. n.   | 154. 192. 505. n.             |
| Rucker v. Annarsley, (Licences,) 5 <i>M. &amp; S.</i> 35.   | 199                               | —, Indiano, (National Character,) 2 <i>Gallison's (Amer.) Rep.</i> 268.   | 239. n.                       |
| —, Berens v., (Trade with the Enemy,) 1 <i>W. Black.</i> 314.   | 458                               | — Joseph, Argois, (Head Money,) 6 <i>C. Rob.</i> 331.   | 178                           |
| Ruekers, Carey, (Damage personal, Pleadings,) 4 <i>C. Rob.</i> 74.  | 3. n. 140. 293                    | — Juan Nepomuceno, Yambi, (Appeals, Captors, Slave Trade,) 1 <i>Hagg.</i> 267. 270.   | 26. 30. 91. 427. 440          |
| Russell v. Baird, (Masters, Mortgages,) 1 <i>D.</i> 931.  | 224. n. 233. n.                   | Sandford, Boson v., (Owners,) 3 <i>Lev.</i> 255.  | 271                           |
| —, Douglas v., (Mortgages, Navigation Laws, Wages,) 4 <i>B. &amp; Ad.</i> 533.; 4 <i>Sim.</i> 524.; 1 <i>Myline &amp; K.</i> 468. 488. 523. | 233. 253. 499                     | Sandforth, Boyon v., (Owners,) <i>Carth.</i> 63.  | 269                           |
| —, Woods v., (Material Men, Owners,) 5 <i>B. &amp; A.</i> 942.; <i>Abb. Sh.</i> 76.   | 227. 275                          | Sands v. Exton, (Admiralty, Prohibition,) 2 <i>Show.</i> 303.; <i>T. Raym.</i> 488.; <i>Shin.</i> 91.                                     | 7. 345                        |
| S.  |                                   | —, Tremoulin v., (Admiralty, Prize, Prohibition,) <i>Carth.</i> 423.; <i>Comb.</i> 463.; 1 <i>Ld. Raym.</i> 272.; 6 <i>Vin. Abr.</i> 516. | 4. 316. 345                   |
| Sacra Familia, Yusap, (Prize,) 5 <i>C. Rob.</i> 360.  | 335                               | Sandys v. Hohter, (Security for Costs,) 6 <i>Dowl. P. C.</i> 274.; 1 <i>W. W. &amp; H.</i> 57.  | 411                           |
| Sahira, (Salvage,) 7 <i>Jur.</i> 182.   | 399                               | — v. Pierce, (Security for Costs,) 1 <i>Tidd's Prae.</i> 581.; <i>S. P.</i> 1 <i>Chit.</i> 267. n.  | 412                           |
| Sainsbury, Mason v., (Damage,) 3 <i>Dowl.</i> 60.   | 127                               | Sansom, Stevens, (Salvage military) 6 <i>C. Rob.</i> 410.   | 406                           |
| St. Anne, (Flag Share,) 3 <i>C. Rob.</i> 60.  | 159                               | Santa Anna, Larinsago, (National Character, Trade with the Enemy,) <i>Edw.</i> 180.   | 236. 458                      |
| St. Antonius, Willelms, (Captors,) 1 <i>Acton.</i> 113.   | 89                                | — Brigada, Pilow, (Head Money, Joint Capture,) 3 <i>C. Rob.</i> 52.   | 178. 183. 186                 |
| St. Barbe, Ritchie v., (Navigation Laws,) 4 <i>Taunt.</i> 768.  | 252                               | — Cruz, Picoa, (Droits of Admiralty, Prize, Recapture, Salvage military) 1 <i>C. Rob.</i> 49. 63. 67. 76.                                 | 148. 324. 332. 349. 401       |
| St. Catherine, Sinclair, (Assignees, Bottomry,) 3 <i>Hagg.</i> 253.; 1 <i>Notes of Cases.</i> 502.  | 28. 50. 51. 51. n. 63. 66. 69. 78 | Santissima Coracao De Maria, Carneiro, (Contraband,) 2 <i>Acton.</i> 91.  | 108                           |
| St. Ivan, Wacklin, (Licences, Prize,) <i>Edw.</i> 376.  | 201. 328                          | Santo Thomas, Castello, (Freight,) 2 <i>Acton.</i> 86.  | 172                           |
| St. Jago de Cuba, (Wages,) 9 <i>Wheaton's (Amer.) Rep.</i> 409.   | 482. n.                           | Sappho, (Damage,) 9 <i>Jur.</i> 560.  | 126. 133                      |
| St. Johan, Havemeyer, (Wages,) 1 <i>Hagg.</i> 334.  | 498                               | Sapte, Koster v., (Courts, Practice,) 1 <i>Curteis.</i> 702.  | 117. 307                      |
| St. Juan, Baptista, (Captors, Visitation and Search,) 5 <i>C. Rob.</i> 33.  | 90. 143. 469                      | Sara Barnardina, (Witnesses,) 2 <i>Hagg.</i> 151.   | 506                           |
| Salacia, Garland, (Salvage,) 2 <i>Hagg.</i> 262. 269.   | 351. 356. 366. 370. 376. 377. 398 | Saracen, (Appeals, Bail, Bonds, Bottomry, Damage, Practice, Prohibition,) 10 <i>Jur.</i> 398.; 4 <i>Notes of Cases.</i> 509.              | 26. 34. 49. 76. 127. 307. 344 |
| Sally, (Captors, Prize,) 8 <i>Crauch's (Amer.) Rep.</i> 382.  | 85. n. 329. n.                    | Sarah, (Salvage,) 1 <i>C. Rob.</i> 313.   | 374                           |
| —, (Trade with the Enemy,) <i>Hay &amp; Marriott.</i> 83.   | 463                               | — Ann, (Title,) 2 <i>Sumner's (Amer.) Rep.</i> 206.   | 19. n. 452. n.                |
| —, Beetle, (Prize,) 3 <i>C. Rob.</i> 179.   | 335                               | — Bell, (Salvage,) 4 <i>Notes of Cases.</i> 147.  | 380. n.                       |
| —, Griffiths, (National Character,) 3 <i>C. Rob.</i> 300.   | 246. 247                          | —, Bernhardus, (Contraband, Prize,) <i>Hay &amp; Marriott.</i> 175.   | 106. 107. 317                 |
| —, Griffiths, (Contraband,) 6 <i>C. Rob.</i> 456.   | 105                               | — Christina, Gorgensen, (Contraband,) 1 <i>C. Rob.</i> 237. 241.  | 104. 106. 109. 110            |
| —, Hens, (Trade with the Enemy,) 4 <i>C. Rob. App. A.</i> 14. n. 15. n.   | 459                               | —, Gill, (Navigation Laws,) 1 <i>Dodson.</i> 77.  | 256. n. 259                   |
| —, Joy, (Appeals,) 2 <i>C. Rob.</i> 224. 229.   | 26. 27                            | — Jane, (Salvage,) 2 <i>W. Rob.</i> 110. 115. 119.  | 215. 366. 371. 373. 392       |
| — and Cargo, (Claimants,) 1 <i>Gallison's (Amer.) Rep.</i> 414.   | 98. n.                            | —, (Practice,) 7 <i>Jur.</i> 659.   | 303                           |
| Salmon and others v. Cromwell, (Allegations,) 3 <i>Phil.</i> 220.   | 17. 19                            | — Maria, Marstrandt, (Licences,) <i>Edw.</i> 361.   | 202                           |
| Saloin's case, (Treaties,) 2 <i>Knapp.</i> 350.   | 465                               | — Smith, (Prize,) 3 <i>C. Rob.</i> 330.   | 333. 334                      |
| Salvador, Gardner v., (Title,) 1 <i>M. &amp; R.</i> 116.; <i>Abb. Sh.</i> 14.   | 454                               | Saratoga, (Wages,) 2 <i>Gallison's (Amer.) Rep.</i> 178.  | 481. n. 484. n.               |

|   | Page                              |  | Page   |
|---|-----------------------------------|--|--|
| Saunders v. Drew, (Wages,) 3 B. & A. 445.             | 484                               | Sewell, Lamii v., (Security for Costs,) 1 Wils. 266. | 412  |
| Sawcer, Graves v., (Owners,) Sir T. Raym. 1.;         |                                   | Seyerstadt, Erbe, (Licences,) 1 Dodson, 241.         | 197. 204   |
| Keb. 38.; 1 Lev. 29.; Abb. Sh. 100.                   | 268                               | Shank and others, Exp., (Material Men,) 1 Atkins,    | 234.; Abb. Sh. 147.                              |
| (Saxe Cobourg, Ladd,) Soares, Rahn v., (Bot-          |                                   | Shannon, Higginson, (Damage, Witnesses,) 1 W.        | Rob. 463. 466.                                   |
| tomry,) 3 Moore, 1.                                   | 63. 67                            | —, Pennefather, (Damage,) 2 Hagg. 173.               | 133. 136   |
| Scarborough v. Lyrius, (Bottomry,) 3 Car. 1.;         |                                   | — and Placidia, (Damage, Evidence,) 7 Jur.           | 380.   |
| Latch. 252.; Noy. 95.; 14 Vin. Abr. 329.              | 52. n. 55                         | Shaunessy and others, Casey and Shanahan v.,         | (Evidence,) 4 Notes of Cases, 150.               |
| Schiffner v. Gordon, (Licences,) 12 East, 295. 302.   | 197. 207                          | Shaw, Exp., (Paupers,) 2 Ves. jun. 40. 60.           | 282  |
| Schimmel v. Lousada, (Costs,) 4 Taunt. 695.           | 114                               | Sheffield v. Ball and others, (Appeals, Security for | Costs,) 2 Lee, 291.                              |
| Schnakoneg v. Andrews, (Licences,) 5 Taunt. 716.      | 198                               | Shepherd and others, Miller v., (Evidence,) 2 Lee,   | 530.   |
| Schoone Sophie, (Trade with the Enemy,) 6 C.          |                                   | — et al. v. Taylor et al., (Wages,) 5 Peters'        | (Amer.) Rep. 675.                                |
| Rob. 251. n.  | 462                               | Shepherd v. Gosnold, (Wreck,) Vaugh. 168.            | 511  |
| —, Arians, (Prize,) 6 C. Rob. 138.                    | 316. 466                          | — v. Wright, (Average,) 1 Show. 18.                  | 31. n.   |
| (Schooner) Exchange v. M'Faddon, (Neutrals,) 2        |                                   | Shepherdess, Miller, (Blockade,) 5 C. Rob. 262.      | 44   |
| Cranch's (Amer.) Rep. 115.                            | 266                               | Shepney, Johnson v., (Admiralty,) 6 Mod. 79.; 14     | Fin. Abr. 300.                                   |
| Schroeder, Dobree v., (Owners,) 6 Sim. 291.; 2        |                                   | Sheridan, Jardin v., (Evidence,) 2 Carr. & K. 24.    | 155  |
| Mylne & C. 489.                                       | 274                               | Sheriff v. Farquharson, (Security for Costs,) 1      | Tidd's Prac. 179.                                |
| — v. Vaux, (Licences,) 15 East, 52.; 3                |                                   | Sherley's case, (National Character,) 2 Anst. 401.   | 235  |
| Camp. 84. n.  | 202. 205                          | Sherman v. Bennett, (Wages,) M. & M. 489.            | 486  |
| Schumack v. Lock, (Evidence,) 10 Moore, 39.           | 154                               | Sherwill v. King, (Casador,) (Slave Trade,) 2        | Moore, 1.  |
| Scott, Beilby v., (Pilots,) 7 M. & W. 83.; Abb. Sh.   | 270.                              | Sherwood v. M'Intosh, (Wages,) Adm. Dec. in the      | District Court of Maine, Curtis' Adm. Dig. 522.  |
| —, Flindt v., (Licences,) 5 Taunt. 674.; 15 East,     | 525.                              | Ship Blaireau, Mason v., (Salvage,) 2 Cranch's       | (Amer.) Rep. 240.                                |
| —, Grigg v., (Licences,) 4 Camp. 339.; 1 Holt,        | 129.                              | — Carpenter, Meyer, (Contraband,) 2 Acton, 11.       | 106  |
| —, Hullman v., (Licences,) 3 M. & S. 337.             | 199                               | Shippen, Johnson v., (Bottomry, Slave Trade,         | Title,) 2 Ld. Raym. 982.; Salk. 35.; 6 Mod. 99.; |
| —, Parsons v., (Ransom,) 2 Taunt. 363.                | 347                               | 14 Vin. Abr. 300.; Abb. Sh. 154.; Rep. temp.         | Holt, 48. 154.                                   |
| — v. Scott, (Owners,) 2 Stark. 438.                   | 272                               | Shipton v. Thornton, (Freight,) 1 P. & D. 216.       | 168  |
| —, Temperley v., (Costs,) 1 M. & Scott, 601.;         |                                   | Ships taken at Genoa, (Capitulations, Prize, Ships,) | 4 C. Rob. 388. 398. 403.                         |
| 8 Bing. 392.  | 113                               | Sidebottom, Caruthers v., (Owners,) 4 M. & S. 77.    | 277  |
| —, Waring v., (Licences,) 4 Taunt. 605.               | 204                               | Siffkin v. Allnutt, (Licences,) 1 M. & S. 39.        | 202. 207   |
| Seales v. Key, (Customs and Usages,) 11 Ad. & E.      | 819.; 3 Per. & D. 505.            | — v. Glover, (Licences,) 4 Taunt. 717.               | 201. 206   |
| Secombe v. Wood, (Damage,) 2 Mood. & Rob. 290.        | 137                               | — v. Wray, (Stoppage in Transitu,) 6 East;           | 371.   |
| Sechs Geschusten, Jobs, (National Character,) 4 C.    |                                   | Sills v. Brown, (Damage, Evidence,) 9 Car. & P.      | 601.   |
| Rob. 100.   | 242                               | Simmonds and another v. Hodgson, (in error,)         | (Bottomry,) 3 B. & Ad. 50.; 3 M. & P. 385.; 6    |
| Secretan, Christie v., (Evidence,) 8 T. R. 192.       | 152                               | Bing. 114.   | 60. 64   |
| Sedulous, Mills, (Salvage military,) 1 Dodson, 253.   | 404                               | Simmons, Aldrich v., (Owners,) 1 Stark. 210.         | 277  |
| Seekamp, Webster v., (Material Men,) 4 B. & A.        | 252.                              | Simond, Mackrell v., (Freight,) 2 Chit. 666.; Abb.   | Sh. 463.   |
| See Reuter, Zange, (Possession,) 1 Dodson, 22.        | 296. 297                          | Simpson, Regina v., (Statutes,) 10 Mod. 248.         | 447  |
| Segard v. Roberts, (Wages,) 3 Esp. 72.; Smith's       |                                   |  |  |
| Merc. Law. 402.; Abb. Sh. 175.                        | 490. 491.                         |  |  |
| Selina, (Salvage, Wages,) 2 Notes of Cases, 18.       | 396. n. 398. n. 496. n.           |  |  |
| Senne, Gibson v., (Prize,) 1 Stark. 119.; 5 Taunt.    | 433.                              |  |  |
| Sergeant v. Sergeant, (Allegations,) 1 Curteis, 3. 6. | 18                                |  |  |
| Serhassan Pirates, (Pirates,) 9 Jur. 143.; 3 Notes    |                                   |  |  |
| of Cases, 591.; 2 W. Rob. 351.                        | 289. 290                          |  |  |
| Seringapatam, (Bail, Damage, Security for Costs,) 10  |                                   |  |  |
| Jur. 1065.; 5 Notes of Cases, 61. 66.                 | 36. 125. n. 131. n. 133. 139. 411 |  |  |
| Serle, Day v., (Wages,) 2 Barnard, 419.; 2 Stra.      | 969.                              |  |  |
| Several Dutch Schuyts, (Head Money,) 6 C. Rob.        | 48.                               |  |  |
| Seward, Luck v., (Damage,) 4 Car. & P. 106.           | 126                               |  |  |



|  | Page               |  | Page                                   |
|--|--------------------|--|--|
| Sir Francis Burton, Hare, (Salvage mixed,) 2 <i>Hagg.</i> 156.   | 388. 408, 409      | Soames v. Sugrue, (Title,) 4 <i>Car. &amp; P.</i> 276.   | 284.                                   |
| Sir Peter, Garlick, (Salvage mixed) 2 <i>Dodson</i> , 73.  | 409                |  | 454                                    |
| Sisters, (Pleadings, Title,) 5 <i>C. Rob.</i> 155.   | 294.               | Soares v. Rahn, (Saxe' Cobourg, Ladd,) (Bottomry,) 3 <i>Moore</i> , 1.   | 57. 63. 67                             |
| ——, Stokes, (Possession,) 4 <i>C. Rob.</i> 275.  | 295                | Sociedade Felix, Joao de Souza Campos, (Evidence, Joint Capture, Slave Trade,) 1 <i>W. Rob.</i> 303. 311.; 2 <i>W. Rob.</i> 155. 164.; 6 <i>Jur.</i> 104.; 7 <i>Jur.</i> 956.; 1 <i>Notes of Cases</i> , 186. 430. | 153. 184. 186, 187. 191, 192. 439. 441 |
| ——, Tubbs, (Possession,) 3 <i>C. Rob.</i> 213.   | 299                | Sorgutten (Costs, Practice,) 3 <i>Notes of Cases</i> , 271.  | 115. n. 307. n.                        |
| Slade, M'Intosh v., (Owners,) 6 <i>B. &amp; C.</i> 657.; 9 <i>D. &amp; R.</i> 798.; <i>Abb. Sh.</i> 210.                           | 278                | Somers v. Buckley, (Joint Capture,) 2 <i>Lev.</i> 182. pl. 224.; 6 <i>Fin. Ab.</i> 218.  | 185                                    |
| Slater v. Willis, (Navigation Laws,) 1 <i>Beau.</i> 355.   | 250                | Somers, Metherell, (Prize,) 2 <i>Dodson</i> , 56.  | 317                                    |
| Slave, Duncan, (Slave Trade,) 2 <i>Hagg.</i> 427.  | 423. n.            | —— v. Stewart, (Slaves,) <i>Lofft. Rep.</i> 1.   | 420, 421                               |
| —— Fahny, Ford, (Slave Trade,) 2 <i>Hagg.</i> 271.   | 423. n.            | Somerville v. Somerville, (National Character,) 5 <i>Ves.</i> 787.   | 237                                    |
| —— Grace, (Appeals, Slaves,) 2 <i>Hagg.</i> 94. 100. 107. 117. 121. 129. 134.  | 27. 120. 420       | Sophia Elizabeth, (Blockade,) <i>Prott</i> , 1 <i>Acton</i> , 46.  | 38                                     |
| Smart v. Wolff, (Freight, Prohibition,) 3 <i>T. R.</i> 323. 347.   | 164. 344, 345      | Sophie, (Security for Costs,) 1 <i>W. Rob.</i> 326.  | 412. 414                               |
| Smartoun, Clerk v., (Claimants,) 2 <i>Stair's Decisions</i> , 241.   | 97. n.             | ——, Gustavus, (Material Men,) 1 <i>W. Rob.</i> 368.  | 228, 229                               |
| Smith, Armstrong v., (Wages,) 1 <i>N. R.</i> 299.; <i>Abb. Sh.</i> 624.  | 487. 503           | Soult v. L'Africaine, (Neutrals,) <i>Bee's (Amer.) Rep.</i> 204.   | 265. n.                                |
| —— v. Blake, (Practice,) 1 <i>Hagg.</i> (Eccl.) 88.  | 305                | South, Cooper v., (Ship's Register,) 4 <i>Taunt.</i> 802.  | 418                                    |
| —— v. Corry, (Allegations, Costs,) 1 <i>Lee</i> , 432.   | 16. 115            | Southwell, Dearle v., (Practice,) 2 <i>Lee</i> , 93.   | 306                                    |
| —— v. Crosby, (Wages,) <i>Fort.</i> 230.   | 473                | Spain, (King of,) Hallett v., (Foreigners,) 1 <i>Dow. N. S.</i> 169.; 2 <i>Bl. N. S.</i> 31.; 1 <i>Clark &amp; Fin.</i> 333.   | 163                                    |
| —— v. Dobson, (Damage,) 3 <i>Scott, N. S.</i> 336.; 3 <i>Mann. &amp; Gr.</i> 59.   | 126                | Sparenburgh v. Bannatyne, (Aliens,) 1 <i>B. &amp; P.</i> 163.; 2 <i>Esp.</i> 580.  | 15                                     |
| —— Effurth v., (Licences,) 5 <i>Taunt.</i> 329.  | 201                | Sparkler, Brown, (Joint Capture, Salvage military) 1 <i>Dodson</i> , 359. 362.   | 187. 193. 403                          |
| —— v. Fell, (Evidence,) 2 <i>Curteis</i> , 667. 697.   | 155                | Sparks v. Martin, (Admiralty, Contraband,) 1 <i>Vent.</i> 1.; 6 <i>Fin. Ab.</i> 522.   | 6. 106. n.                             |
| —— v. Gould and others, (Prince George,) (Aliens, Bottomry,) 4 <i>Moore</i> , 28.; 6 <i>Jur.</i> 543.                              | 15. 57. 65. 67. 69 | Sparrow, Harrison v., (Appeals,) 3 <i>Curteis</i> , 1.   | 24                                     |
| —— Helme v., (Navigation Laws, Owners,) 7 <i>Bing.</i> 702. 709.; 5 <i>M. &amp; P.</i> 744.  | 251. 268           | ——, Rex v., (Statutes,) 2 <i>Str.</i> 1123.  | 446                                    |
| —— v. Lord Mayor, (Prohibitions,) 6 <i>Mod.</i> 78.  | 344                | Spartan, (Freight, &c. of the,) Drinkwater et al. v., (Wages,) 3 (Amer.) <i>Jur.</i> 26.   | 498. n.                                |
| —— v. Lyon, (Evidence,) 3 <i>Camp.</i> 465.  | 154                | Speculation, Eberhard, (Licences, Title,) <i>Edw.</i> 344.   | 208. 455                               |
| —— Maloney v., (Security for Costs,) <i>M. Chit. &amp; F.</i> 213.   | 413                | ——, Feroe, (Captors, Trade with the Enemy,) 2 <i>C. Rob.</i> 95. 293.  | 85. 87. 92. 100. 462                   |
| —— v. Nicholls, (Admiralty,) 7 <i>Scott</i> , 147.; 5 <i>Bing. N. C.</i> 208.; 7 <i>Dowl. P. C.</i> 282.; 1 <i>Arn.</i> 474.       | 8                  | ——, Koht v., (Neutrals, Prize,) <i>Edw.</i> 184.   | 266. 317. 321                          |
| —— and another v. Plummer and others, (Masters,) 1 <i>B. &amp; A.</i> 575.   | 224. 227           | Speculator, Benest, (Wages,) 3 <i>Hagg.</i> 330. n.  | 501                                    |
| —— Rolleston v., (Navigation Laws,) 4 <i>T. R.</i> 161.  | 252                | Speed, Ellis, (Affidavits, Damage, Evidence, Pleadings, Trinity Masters,) 7 <i>Jur.</i> 1068.; 2 <i>W. Rob.</i> 230.   | 9. 130. 150. 156. 291. 466, 467        |
| —— v. Smithson, (Answers,) 2 <i>Lee</i> , 505.   | 21                 | Speer et al. v. Pearson, (Wages,) 1 <i>Mason's (Amer.) Rep.</i> 104.   | 495. n.                                |
| —— v. Surridge, (Prize,) 4 <i>Esp.</i> 25.; 2 <i>Park on Ins.</i> 717.   | 316                | Speerman v. Degrave Galway, (Masters,) 2 <i>Vern.</i> 643.   | 223                                    |
| ——, Thompson v., (Prize,) <i>Sid.</i> 320.   | 312                | Speldt v. Lechmere, (Navigation Laws,) 13 <i>Ves.</i> 588.   | 250. 252                               |
| ——, Thomson v., (Mortgagees,) 1 <i>Mod.</i> 395.   | 231                | Spes, Cornelis, (Blockade,) 5 <i>C. Rob.</i> 76.   | 40. 44                                 |
| Smithson, Smith v., (Answers,) 2 <i>Lee</i> , 505.   | 21                 | Spheroid, (Salvage,) 2 <i>Monthly Law Mag.</i> 285.  | 375. n.                                |
| Smyth v. Smyth, (Appeals, Evidence, Inhibition,) 4 <i>Hagg.</i> (Eccl.) 72.  | 25. 27. 151. 181   | Spry v. Flood, (Statutes,) 2 <i>Curt.</i> 365.   | 447                                    |
| Snee, Buxton v., (Material Men,) 1 <i>Vezey</i> , 154.   | 226                | Stadt Embden, Jacobs, (Contraband, Trade with the Enemy,) 1 <i>C. Rob.</i> 29.   | 106. 109. 458                          |
| Soelgrave, Clay v., (Wages,) 12 <i>Mod.</i> 465.; <i>Com.</i> 74.; 1 <i>Ld. Raym.</i> 576.; 1 <i>Salh.</i> 33.; <i>Carth.</i> 518. | 475                | Stainforth, Henry v., (Licences,) 4 <i>Camp.</i> 270.  | 201                                    |
| Snell et al. v. The Independence, (Wages,) <i>Gilpin's (Amer.) Rep.</i> 89. 140.   | 494. n. 496. n.    | Staniforth v. Coombs, (Licences,) 5 <i>Taunt.</i> 726.   | 306                                    |
| Snelle, Zeylder, (National Character,) 3 <i>C. Rob.</i> 21.  | 239                |  |  |
| Snipe and others, (Blockade,) <i>Edw.</i> 381.   | 43                 |  |  |

|   | Page                           |   | Page                           |
|---|--------------------------------|---|--------------------------------|
| Staniforth v. Forsyth, (Licences,) 5 <i>Tunst.</i>                      | 726.                           | Summersgill, Lees v., (Statutes,) 17 <i>Ves. jun.</i>                                 | 500.                           |
| Staples, Hullusson v., (Costs,) 2 <i>Dougl.</i>                         | 438.                           |   | 447                            |
| —, Plantamour v., (Masters,) 1 <i>T. R.</i>                             | 611. n.                        | Sundry Boats, or Trabacolos, captured in the Adriatic, (Prize Agents,) 1 <i>Hagg.</i> | 294.                           |
| (a).  | 222                            | Superior, Trainer et al. v. (Wages,) <i>Gilpin's (Amer.) Rep.</i>                     | 514.                           |
| Star, (Trade with the Enemy,) 3 <i>C. Rob.</i>                          | 193. n.                        |   | 476. n.                        |
|   | 459. 461                       | Surridge, Smith v., (Prize,) 4 <i>Esp.</i>  | 25. ; 2 <i>Park on Ins.</i>    |
| Steadman, Williams v., (Bottomry,) <i>Holt, Rep.</i>                    | 126. ;                         |   | 316                            |
| <i>Skin.</i>  | 345. ; 1 <i>Eq. Cases Abr.</i> | Susa, Hussey, (Prize, Trade with the Enemy,) 2 <i>C. Rob.</i>                         | 251.                           |
| 130. ; 2 <i>Park on Ins.</i>  | 901. 910.                      |   | 322. 463                       |
| Steele v. Stewart, (Evidence,) 1 <i>Phil.</i>                           | 471. ; 13                      | Susan, (Contraband,) 6 <i>C. Rob.</i>   | 461. n.                        |
| <i>Sim.</i>   | 533.                           |   | 105. 109. 308                  |
| Stein, Campbell v., (Owners,) 6 <i>Dow.</i>                             | 135.                           | —, Hamilton, (Evidence, Wages,) 2 <i>Hagg.</i>  | 229.                           |
| Stella Del Norte, Costa, (Joint Capture,) 5 <i>C. Rob.</i>              | 349.                           |   | 153. 488                       |
| Stephens, Limland v., (Wages,) 3 <i>Esp.</i>                            | 269. ; <i>Abb. Sh.</i>         | Susannah, Brown, (Salvage,) 3 <i>Hagg.</i>  | 345. n.                        |
|   | 490, 491                       |   | 372                            |
| Stephenson v. Dowson, (Freight,) 3 <i>Beav.</i>                         | 342.                           | —, Smith, (Captors, Limitations,) 6 <i>C. Rob.</i>                                    | 51.                            |
|   | 165. n.                        |   | 90. 213                        |
| Sterry, Dunwich (Bailiffs of, &c.) v., (Wreck,) 1 <i>B. &amp; Adol.</i> | 831.                           | Sussex, Roxby, (Salvage, Unlivery and Appraisal,) 3 <i>Hagg.</i>                      | 339.                           |
|   | 515                            | Susman, Albrecht v., (National Character,) 2 <i>F. &amp; B.</i>                       | 323.                           |
| Stert, Johnson, (Blockade,) 3 <i>C. Rob.</i>                            | 297. n. ;                      |   | 238                            |
| 4 <i>C. Rob.</i>  | 66.                            | Sutton v. Buck, (Lords of Manors, Possession, Salvage, Title, Wreck,) 2 <i>Tunst.</i> | 302.                           |
| Stevens v. Bagwell, (Prize,) 1 <i>Ves. jun.</i>                         | 139.                           |   | 213. 295. 373. 450. 517        |
|   | 332                            | —, (in error,) Johnson v., (Prize,) 1 <i>T. R.</i>                                    | 493.                           |
| Stevenson, Jacobs v., (Security for Costs,) 1 <i>B. &amp; P.</i>        | 96.                            |   | 784. ; 1 <i>Bro.</i>           |
|   | 411                            | — v. Johnstone, (Prize,) 1 <i>T. R.</i>   | 508.                           |
| —, Rex v., (Statutes,) 2 <i>East.</i>                                   | 362.                           |   | 329                            |
| Stewart, Foster v., (Wages,) 3 <i>M. &amp; S.</i>                       | 191.                           | —, Lumley v., (Prize,) 8 <i>T. R.</i>   | 224.                           |
| — v. Hall, (Agents,) 2 <i>Dowl.</i>                                     | 29. ; 1 <i>Bel.</i>            |   | 390                            |
| n. 5.   | 11                             | Swan, Dring, (Salvage,) 1 <i>W. Rob.</i>  | 68.                            |
| —, Somerset v., (Slaves,) <i>Lofft. Rep.</i>                            | 1.                             |   | 369. 384                       |
|   | 420                            | Swift, Begbie, (Appeals, Navigation Laws, Statutes,) 1 <i>Dodson.</i>                 | 323. 338. 345.                 |
| —, Steele v., (Evidence,) 1 <i>Phil.</i>                                | 471. ; 13                      |   | 24. 256. n. 258. 260. 447      |
| <i>Sim.</i>   | 533.                           | —, Davis, (Recaptors,) 1 <i>Acton.</i>  | 1.                             |
| Still v. Myrick, (Wages,) 2 <i>Camp.</i>                                | 317.                           |   | 348                            |
| Stirling, Burns v., (Damage,) 2 <i>Mur.</i>                             | 96.                            | — v. Swift, (Answers, Evidence,) 4 <i>Hagg.</i>                                       | (Cons.)                        |
| Stock, Denew v., (Courts,) 3 <i>Swan.</i>                               | 662.                           |   | 139.                           |
| Stokes v. Carne, (Masters, Ship's Register,) 2 <i>Camp.</i>             | 339. 359.                      |   | 20. 157                        |
|   | 223. 418                       | Sword v. Howden, (Bottomry,) 4 <i>S.</i>  | 757.                           |
| — v. La Riviere, (Stoppage in Transitu,) 8 <i>T. R.</i>                 | 466. ; 3 <i>East.</i>          |   | 69. n.                         |
|   | 397.                           | Sydney Cove, Fudge, (Bottomry, Wages,) 2 <i>Dodson.</i>                               | 7. 13.                         |
| Stone v. Cartwright, (Agents,) 6 <i>T. R.</i>                           | 411.                           |   | 67. 74. 75. 80. 473. 497       |
| — v. Stone, (Allegations, Practice,) 3 <i>Curtis.</i>                   | 721. 725.                      | Sylvan, Bell, (Affidavits, Practice,) 2 <i>Hagg.</i>                                  | 155.                           |
|   | 17. 305                        |   | 10. 302                        |
| Stonehouse v. Gent, (Masters,) 2 <i>Add. &amp; Ell. N. S.</i>           | 431. n.                        | Symons, Johns v., (Bottomry, Masters,) 2 <i>Add. &amp; Ell. N. S.</i>                 | 425. ; 2 <i>Park on Ins.</i>   |
|   | 224                            |   | 878.                           |
| Store Ships, (Contraband,) <i>Hay &amp; Marriott.</i>                   | 287.                           |   | 58. 224                        |
|   | 107                            | T.  |                                |
| Storer v. Gordon and others, (Freight,) 3 <i>M. &amp; S.</i>            | 308. ; <i>Abb. Sh.</i>         | Tagart and Bakewell v. Hooper and Harris, (Practice,) 1 <i>Curtis.</i>                | 289. n.                        |
|   | 469.                           |   | 308                            |
| Stort v. Clements, (Damage, Owners, Pilots,) <i>Peake.</i>              | 107.                           | Talbot v. Lewis, (Wreck,) 1 <i>C. M. &amp; R.</i>                                     | 495.                           |
|   | 138. 277. 285                  |   | 516                            |
| Strelley v. Winson, (Owners,) 1 <i>Vern.</i>                            | 297. ; <i>Skin.</i>            | —, (Wreck,) 6 <i>Car. &amp; P.</i>  | 603.                           |
|   | 230. ; <i>Abb. Sh.</i>         |   | 512                            |
| Stringer v. Murray, (Navigation Laws,) 2 <i>B. &amp; A.</i>             | 248.                           | Tarragona, (Prize, Prize Agents,) 2 <i>Dodson.</i>                                    | 487.                           |
|   | 250                            |   | 326. 341                       |
| Strutt, Wick v., (Bail,) <i>Comb.</i>                                   | 320.                           | Tartar, (Bottomry,) 2 <i>Hagg.</i>  | 1. ; <i>Smith's Merc. Law.</i> |
| Stuart v. Isemonger, (Diana,) (Owners,) 4 <i>Moore.</i>                 | 11.                            |   | 384.                           |
|   | 279. 281                       | —, Tharp, (Agents, Bottomry,) 1 <i>Hagg.</i>  | 1. 6.                          |
| — v. Powell, (Navigation Laws,) 1 <i>B. &amp; Ald.</i>                  | 266.                           |   | 11. 69. 77. 80. 96             |
|   | 255                            | Taylor v. Curtis, (Average,) 2 <i>Marsh.</i>  | 309. ; 6                       |
| Success, Smith, (Blockade, National Character,) 1 <i>Dodson.</i>        | 131. 134.                      |   | 608. ; <i>Holt.</i>            |
|   | 38. 44. 243                    |   | 192. ; 4 <i>Camp.</i>          |
| Sugrue, Allen v., (Title,) 8 <i>B. &amp; C.</i>                         | 565.                           |   | 337. ; <i>Abb. Sh.</i>         |
| —, Soames v., (Title,) 4 <i>Car. &amp; P.</i>                           | 276. 284.                      |   | 480.                           |
|   | 454                            | —, De Tastet v., (Aliens,) 4 <i>Tunst.</i>  | 233.                           |
| Sullivan v. Sullivan, (Answers,) 2 <i>Hagg.</i>                         | (Cons.)                        |   | 14                             |
|   | 259.                           | — v. Kinlock, (Navigation Laws,) 1 <i>Stark. N. P. C.</i>                             | 175.                           |
|   | 20                             |   | 252                            |
|   |                                | — v. Morley, (Practice,) 1 <i>Curtis.</i>   | 481.                           |
|   |                                |   | 303                            |
|   |                                | — v. Morse, (Paupers,) 3 <i>Hagg.</i>   | (Eccl.)                        |
|   |                                |   | 179.                           |
|   |                                |   | 282                            |

## TABLE OF CASES.

lxxviii

|  | Page          |  | Page                      |
|--|---------------|--|---------------------------|
| Taylor, Naylor v., (Blockade.) <i>M. &amp; M.</i> 305.; 9                |               | Thompson, Finlay v., (Damage.) <i>4 D.</i> 776.                          |                           |
| <i>B. &amp; C.</i> 718.; 4 <i>M. &amp; R.</i> 526.; <i>Abb. Sh.</i> 601. |               |  | 133. n.                   |
|  | 39. 41. 43    | — v. Havelock, (Masters, Wages,) 1 <i>Camp.</i>                          |                           |
| — v. Paulett, (Lord,) (Flag Share,) 1 <i>H.</i>                          |               | 527.   | 222. 479                  |
| <i>Black.</i> 364. n.  | 159           | — v. Leake, (Navigation Laws,) 1 <i>Mad.</i> 39.                         |                           |
| — v. Pitt, (in error,) (Prize,) 8 <i>Tunst.</i> 805.;                    |               |  | 252, 253                  |
| 11 <i>East.</i> 414.   | 331           | — v. Rowcroft, (Wages,) 4 <i>East.</i> 43.; <i>Abb.</i>                  |                           |
| — et al., Sheppard et al. v., (Wages,) 5 <i>Peters'</i>                  |               | <i>SA.</i> 641.  | 481. n.                   |
| ( <i>Amer.</i> ) <i>Rep.</i> 675.  | 496. n.       | — v. Royal Exchange Assurance Company,                                   |                           |
| Tegg, Farmer v., (Slave Trade,) 7 <i>T. R.</i> 186.                      |               | (Bottomry,) 1 <i>M. &amp; S.</i> 91.; <i>Abb. Sh.</i> 151.               |                           |
|  | 440           |  | 63                        |
| Temperley, Martin v., (Owners,) 8 <i>Gale &amp; D.</i>                   |               | — v. Smith, (Prize,) <i>Sid.</i> 320                                     | 312                       |
| 497.; 4 <i>Ad. &amp; Ell. N. S.</i> 298.                                 | 272           | —, Wheeler v., (Wages,) <i>Str.</i> 707.                                 |                           |
| — v. Scott, (Costs,) 1 <i>M. &amp; Scott.</i> 601.;                      |               |  | 476. 496                  |
| 8 <i>Bing.</i> 392.  | 113           | — et al. v. The Nancy, (Wages,) <i>Bee's</i>                             |                           |
| Tessimond v. Yardley, (Costs,) 5 <i>B. &amp; Adol.</i> 458.              |               | ( <i>Amer.</i> ) <i>Rep.</i> 217.  | 477. n.                   |
|  | 113           | Thomson, Campbell v., (Cargo, Masters,) 1 <i>Stark.</i>                  |                           |
| Test (1), (Mariners' Contracts, Wages,) 3 <i>Hagg.</i>                   |               | 490.   | 93. n. 223                |
| 305.   | 219. 493      | —, Littler v., (Contempt,) 2 <i>Beav.</i> 129.                           |                           |
| —, Brown (2), (Mariners' Contracts, Pleadings,                           |               |  | 101                       |
| Wages,) 3 <i>Hagg.</i> 307. 312. 316.                                    |               | — v. Millie, (Wages,) 13 <i>F. C.</i> 560.; <i>Mor.</i>                  |                           |
| 217. 292. 294. 488. 493. 495. 501. 502                                   |               | <i>No. 4. App.</i>   | 481. n.                   |
| Thacker v. Moates, (Material Men,) 1 <i>M. &amp; Rob.</i>                |               | — v. Smith, (Mortgagees,) 1 <i>Mod.</i> 395.                             |                           |
| 79.; <i>Abb. Sh.</i> 159.; <i>Smith's Merc. Law.</i> 106.                |               |  | 231                       |
|  | 229           | Thomyris, Russell, (Continuity of Voyage, Trade                          |                           |
| Thames, Drummond, (Damage,) 5 <i>C. Rob.</i> 345.                        |               | with the Enemy,) <i>Edw.</i> 17.   | 102. 462                  |
|  | 136           | Thornley, (Damage,) 7 <i>Jur.</i> 380. 659.                              | 124                       |
| Thellinson v. Coaling, (Evidence,) 4 <i>Exp.</i> 266.                    |               | Thornton, Brown v., (Evidence,) 1 <i>Neu. &amp; P.</i>                   |                           |
|  | 154           | 339.; 6 <i>Add. &amp; E.</i> 185.; <i>W. &amp; D.</i> 11.; 1 <i>Jur.</i> |                           |
| Theresa Bonita, De Jong, (Freight,) 4 <i>C. Rob.</i> 236.                |               | 198.   | 154                       |
|  | 171           | —, Shipton v., (Freight,) 1 <i>P. &amp; D.</i> 216.                      |                           |
| Thetia, (Appeals,) 3 <i>Hagg.</i> 98. 100.                               | 25            |  | 168                       |
| —, Crown, Derelicts, Greenwich Hospital,                                 |               | Thorshaven and its Dependencies, (Captors, Prize,)                       |                           |
| Prize Agents, Salvage,) 3 <i>Hagg.</i> 228. 231. 235.                    |               | <i>Edw.</i> 102.   | 81. 372. 329              |
| 118. 144. 148. 177. 341. 353. 362  |               | Three Friends, Heferon, (Salvage <i>military</i> ), 4 <i>C.</i>          |                           |
| —, (Salvage, Flag Share,) 5 <i>Hagg.</i> 48. 58. 63.;                    |               | <i>Rob.</i> 268. 272.  | 407                       |
| 2 <i>Kemp.</i> 409.  |               | Three Slaves, (Slave Trade,) 2 <i>Hagg.</i> 412.                         |                           |
| 360. 362. 376. 381. 383. 390. 391. 395                                   |               |  | 423. n.                   |
| Third of June, (Prize,) <i>Hay &amp; Marriott.</i> 18.                   |               | Tilton, (Title,) 5 <i>Mason's (Amer.) Rep.</i> 465.                      |                           |
|  | 327           |  | 463. n.                   |
| (Thirteenth of June,) Guimaraens v. Preston,                             |               | Timson v. Merc, (Licences,) 9 <i>East.</i> 35.                           | 205                       |
| (Slave Trade,) 6 <i>Jur.</i> 879.; 4 <i>Moore.</i> 167.                  |               | Tindall v. Bell, (Damage,) 11 <i>M. &amp; W.</i> 228.                    | 128                       |
|  | 428. 445      | Tinkler v. Walpole, (Ship's Register,) 14 <i>East.</i>                   |                           |
| Thirty Hogsheads of Sugar v. Boyle, (Law of                              |               | 226.   | 418                       |
| Nations,) 9 <i>Cranek's (Amer.) Rep.</i> 191.                            |               | Titus, Cushing, (Further Proof, Prize,) 2 <i>W. Rob.</i>                 |                           |
|  | 194. n.       | 259.; 8 <i>Jur.</i> 222.; 1 <i>Acton.</i> 18.                            |                           |
| Thirty-two Casks of Tallow, King v., (Droits of                          |               |  | 175. 317                  |
| Admiralty,) 3 <i>Hagg.</i> 299.  | 149           | Tobago, De Witte, (Bottomry, Liens, National                             |                           |
| Thom, Eaken v., (Wages,) 5 <i>Exp. N. P. C.</i> 6.; <i>Abb.</i>          |               | Character, Title,) 5 <i>C. Rob.</i> 218.                                 |                           |
| <i>Sh.</i> 639.  | 482           |  | 61. 62. 87. 211. 244. 450 |
| Thomas Handford, Sawyer, (Wages,) 2 <i>Hagg.</i> 41. n.                  |               | Tobin, Alers v., (Cargo,) <i>Abb. Sh.</i> 256.                           | 93. n.                    |
|  | 503           | Todhunter, Parmeter v., (Bottomry,) 1 <i>Camp.</i> 541.                  |                           |
| —, M'Quay, (Possession, Salvage <i>military</i> ),                       |               |  | 57. 65                    |
| 1 <i>C. Rob.</i> 322.  | 298. 406. 451 | Toller, Peddle v., (Prize Agents,) 3 <i>Hagg.</i> (Eccl.)                |                           |
| —, (Ship,) Trump et al. v., (Wages,) <i>Bee's</i>                        |               | 297.   | 343                       |
| ( <i>Amer.</i> ) <i>Rep.</i> 86.   | 497. n.       | Tomlinson v. Philips, (Admiralty,) 12 <i>Rep.</i> 104.;                  |                           |
| — and William, (Salvage,) 10 <i>Monthly Law</i>                          |               | 6 <i>Fin. Abr.</i> 521.  | 7                         |
| <i>Mag.</i> 215.   | 399. n.       | Tonkin (The Friends), General Steam Navigation                           |                           |
| — Wood, Wright, (Salvage,) 1 <i>W. Rob.</i> 18.                          |               | Company v., (Damage, Trinity Masters,) 4 <i>Moore.</i>                   |                           |
|  | 397           | 314. 322.  | 125. 135. 136. 139. 466   |
| Thompson v. Beale, (Wages,) 1 <i>Dow.</i> 299.; 4 <i>East.</i>           |               | Topaz, Nicoll, (Visitation and Search,) 2 <i>Acton.</i> 20.              |                           |
| 546.; 1 <i>Smith.</i> 144.; 8 <i>B. &amp; P.</i> 405.; <i>Abb. Sh.</i>   |               |  | 470                       |
| 642.   | 481           | Tortola, Mac Kie, (Appeals, Navigation Laws,) 1                          |                           |
| —, Blackburne v., (National Character,) 1                                |               | <i>Dodson.</i> 120. 124. 128.  | 22. 27. 269               |
| 3 <i>Camp.</i> 61.; 15 <i>East.</i> 81.                                  | 234. 266. 320 | Toulman v. Anderson, (Crown, Licences, National                          |                           |
| — v. Collins, (Wages,) 1 <i>N. R.</i> 347.; <i>Abb.</i>                  |               | Character, Practice, Statutes,) 1 <i>Tunst.</i> 227.                     |                           |
| <i>Sh.</i> 653.  | 495           |  | 120. 195. 234. 304. 448   |
| —, Donaldson v., (Prize,) 1 <i>Camp.</i> 429.                            |               | Toulmin, Parker v., (Costs, Flag Share,) 1 <i>Car.</i>                   |                           |
|  | 316           | 264.   | 117. 158                  |
| —, Feize v., (Licences,) 1 <i>Tunst.</i> 121.                            |               | Touray, Robinson v., (Licences,) 1 <i>M. &amp; S.</i> 217.;              |                           |
|  | 198. 201      | 3 <i>Camp.</i> 160.  | 199                       |

|  | Page              |   | Page                        |
|--|-------------------|---|-----------------------------|
| Towan, (Affidavits, Attachment, Evidence, Pleadings, Practice, Salvage, Statutes, Witnesses), 8 <i>Jur.</i> 222.; 3 <i>C. Rob.</i> 199.; 2 <i>W. Rob.</i> 259. |                   | Turner, Dandy v., (Bottomry), <i>Eq. Cas. Ab.</i> 372.;   |                             |
| 9. 30. 150. 291. 303. 368. 372. 397. 447. 506.   |                   | 2 <i>Park on Ins.</i> 887..   | 54                          |
| Towers, Bristow v., (Aliens), 6 <i>T. R.</i> 35.   | 12                | —, Ellis v., (Owners), 8 <i>T. R.</i> 531.  | 271                         |
| Townsend, Orne v., (Mariners, Owners, Wages), 4 <i>Muson's (Amer.) Rep.</i> 541.   |                   | —, Hughes v., (Appeals), 4 <i>Hagg. (Eccl.)</i> 47.   | 27                          |
| 215. n. 272. n. 483. n. 493. n. 495. n.  |                   | Turtle v. Hartwell, (Prize), 6 <i>T. R.</i> 426.  | 352                         |
| Train v. Bennett, (Wages), 3 <i>Car. &amp; P. S.</i> ; <i>M. &amp; M.</i> 82.; <i>Abb. Sh.</i> 649.  | 488. 494          | Tutela, Reinstrock, (Blockade), 6 <i>C. Rob.</i> 177.   | 40                          |
| Trainer et al. v. Superior, (Wages), <i>Gilpin's (Amer.) Rep.</i> 514.   | 476. n.           | Twee Gebroeders, Alberts, (Neutrals), 3 <i>C. Rob.</i> 162.   | 264, 265                    |
| Transit, (Owners), 1 <i>Monthly Law Mag.</i> 582.  | 279               | —, Jans, (Licences), <i>Edw.</i> 95.  | 203                         |
| Tranter v. Watson, (Prohibition), 6 <i>Mod.</i> 12.; <i>Salk.</i> 35.; 2 <i>Ld. Raym.</i> 931.   | 946               | —, Northwold, (Evidence, Neutrals), 3 <i>C. Rob.</i> 338. 342.  | 157. 264, 265               |
| Traveller, (Damage), 2 <i>W. Rob.</i> 197.; 7 <i>Jur.</i> 1094.; 2 <i>Notes of Cases</i> , 476.  | 132               | —, Zevar, (Salvage), 3 <i>Hagg.</i> 431.  | 382                         |
| Travellers, Mc Clear, (Salvage), 3 <i>Hagg.</i> 370.   | 360. 375. 386     | Twee Gesuster, (Captors, Droits of Admiralty, Joint Capture), 2 <i>C. Rob.</i> 285.                     | 82. 148. 184, 185           |
| Trelawney, Lake, (Ship's Register), 4 <i>C. Rob.</i> 223.  | 418               | Twee Juffrowen, Etjes, (Contraband), 4 <i>C. Rob.</i> 248. 278.   | 104                         |
| Tremain v. Barrett, (Costs), 1 <i>Marsh.</i> 463. 563.   | 114               | Twende Brodre, Schall, (Contraband), 4 <i>C. Rob.</i> 33.   | 106                         |
| — v. Faith, (Costs), 6 <i>Taunt.</i> 88.   | 114               | Twende Vernier, Munck, (Stoppage in transitu), 6 <i>C. Rob.</i> 329. n.                                 | 446                         |
| Tremenhere v. Tressilian, (Title), 1 <i>Sid.</i> 452.  | 452               | Twentyman v. Hart, (Masters, Mortgagees), 1 <i>Stark.</i> 366.  | 224. 233                    |
| Tremont, (Wages), 10 <i>Monthly Law Mag.</i> 137..   | 478. n.           | Twilling Riget, Metz, (Freight), 5 <i>C. Rob.</i> 82.   | 172                         |
| —, Gray, (Ship's Register, Title), 1 <i>W. Rob.</i> 163.   | 418. 451          | Two Brothers, McClousky, (National Character, Prize), 1 <i>C. Rob.</i> 131.                             | 234. 236. 316. 321          |
| Tremoulin v. Sands, (Admiralty, Prize, Prohibition), <i>Carth.</i> 423.; 1 <i>Ld. Raym.</i> 272.; <i>Comb.</i> 462, 463.; 6 <i>Vin. Abr.</i> 516.              | 4. 316. 346       | —, Seabury, (Trade with the Enemy), 2 <i>Acton.</i> 38.   | 462                         |
| Trende Sostre, Missen, (Contraband), 6 <i>C. Rob.</i> 387.   | 107               | Two Casks of Tallow, King v., (Crown, Droits of Admiralty, Lords of Manors, Wreck), 3 <i>Hagg.</i> 297. | 120. 149. 213. 511. 515     |
| Tressilian, Tremenhere v., (Title), 1 <i>Sid.</i> 452.   | 452               | Two Catherinees, (Wages), 2 <i>Mason's (Amer.) Rep.</i> 319.  | 484. n.                     |
| Trevanion v. Trevanion, (Allegations, Witnesses), 1 <i>Curtis.</i> 422. 427. 443. 486.   | 17, 18.           | Two Friends, (Salvage), 8 <i>Jur.</i> 1011.   | 389. 393                    |
| 505. n. 506  |                   | —, Mc Dougal, (Salvage military, Wreck), 1 <i>C. Rob.</i> 271. 281. 285.                                | 401. 402.                   |
| Trident, Simson, (Admiralty, Bottomry), 1 <i>W. Rob.</i> 29. 35.; <i>Smith's Merc. Law</i> , 383. n.   | 3. 58. 66. 68. 73 | Two Piratical Gunboats, (Captors, Head Money, Pirates), 2 <i>Hagg.</i> 407.                             | 85. 178. 287. 290. 353      |
| Tribeten, Wallen, (Blockade), 6 <i>C. Rob.</i> 65.   | 39                | Two Sisters, Davison, (Wages, Witnesses), 2 <i>W. Rob.</i> 125. 134. 137. 140. 144.                     | 489. 491. 492. 501. 505. n. |
| Triton, Minderman, (Captors), 1 <i>Hagg.</i> 290.  | 91                | Two Slaves, (Appeals, Slave Trade), 2 <i>Hagg.</i> 273.   | 27. 423. n.                 |
| —, Trip, (Captors), 4 <i>C. Rob.</i> 78.   | 89                | Two Susannahs, Braren, (Captors), 2 <i>C. Rob.</i> 132.   | 88                          |
| Tritonia, (Salvage), 5 <i>Notes of Cases</i> , 110.  | 356. n.           | Tyrrell and Harding, Marsh v., (Law of Nations, 1 <i>Hagg. (Eccl.)</i> 133.                             | 163. 291                    |
| Triune, Wardell, (Freight, Responsibility of Owners), 3 <i>Hagg.</i> 114. 117.   | 165. 272. 275     |   |                             |
| True Blue, Roberts, (Salvage), 2 <i>W. Rob.</i> 179.; 7 <i>Jur.</i> 756.; 2 <i>Notes of Cases</i> , 413.   | 370               |   |                             |
| Truelock, Onge v., (Security for Costs), 1 <i>Beat.</i> 341.   | 410               |   |                             |
| Trump et al. v. Ship Thomas, (Wages), <i>Bee's (Amer.) Rep.</i> 86.  | 497. n.           |   |                             |
| Tucker, Duckworth v., (Flag Share, Prize), 2 <i>Taunt.</i> 7.  | 162. 313          |   |                             |
| —, (in error,) Nelson (Lord) v., (Flag Share), 4 <i>East.</i> 238.; 3 <i>B. &amp; P.</i> 257.  | 161, 162          |   |                             |
| Tuffnell and Mason, Constable and Bailey v., (Witnesses), 4 <i>Hagg.</i> 507.  | 506. n.           |   |                             |
| Tulloch v. Boyd, (Licences), 1 <i>Moore</i> , 174.; 7 <i>Taunt.</i> 472.; <i>Holt</i> , 487.   | 203               |   |                             |
| — v. Crowley, (Security for Costs), 1 <i>Taunt.</i> 18.  | 412               |   |                             |
| Tunes v. Glass & Co., (Damage), 4 <i>Mer.</i> 167.   | 123               |   |                             |
| Tunison, Cloutman v., (Wages), 1 <i>Sumner's (Amer.) Rep.</i> 373.   | 489. n.           |   |                             |
| Tunno, Everth v., (Licences), 1 <i>B. &amp; A.</i> 142.; 1 <i>Stark.</i> 508.  | 204               |   |                             |
| Turner v. Cary and Neele, (Prize), 1 <i>Lev.</i> 243.; 1 <i>Sid.</i> 367.  | 312               |   |                             |

## U.

|  |                    |
|--|--------------------|
| Underwood v. Robertson, (Security for Costs), 4 <i>Camp.</i> 138.    | 412                |
| Union, Olmsted, (Joint Capture), 1 <i>Dodson.</i> 346.               |                    |
| 352.   | 181. 184. 187, 188 |
| Union, Putnam, (Navigation, Laws), 1 <i>Hagg.</i> 32.                | 37.                |
| 249. 260   |                    |
| United Kingdom, Allen, (Salvage), 3 <i>Hagg.</i> 401.                |                    |
| United States v. Coombs, (Wreck), 12 <i>Peters' (Amer.) Rep.</i> 72. | 512. n.            |
| Upnor, Hadlow, (Salvage), 2 <i>Hagg.</i> 3.                          | 363                |
| Urania, Walker, (Pleadings, Salvage military), 5 <i>C. Rob.</i> 148. | 293. 401           |
| Uranie, Morgotte, (Head Money), 2 <i>Dodson.</i> 172.                | 179                |

## TABLE OF CASES.

LXXIV

Usher v. Lyon, (Pilots,) 2 *Price*, 118. 284  
 Usparicha v. Noble, (Aliens, Licences, National Character,) 13 *East*, 332; 1 *Hale*, 165; *Dyer*, 144. n. 15. 196. 235

## V.

achel v. Vaehel, (Bottomry,) 2 *Chan. Cases*, 130. 70  
 Valiant, Griffiths, (Possession,) 1 *W. Rob.* 64. 295. 298  
 Vallezjo v. Wheeler, (Customs and Usages,) *Loft.* 631. 120  
 Vanbrymen v. Wilson, (Aliens,) 9 *East*, 321. 15  
 Vandeput, Eades v., (Wages,) 5 *East*, 39. n.; 4 *Dougl.* 1. 499  
 Vander, Leye, (Prize, Registrar and Merchants,) *Hay & Marriott*, 184. 325. 351  
 Vanderplank v. Miller, (Damage,) *M. & M.* 169. 126  
 Vandyk v. Whitmore, (Licences,) 1 *East*, 475. 195. 197. 203  
 Vanguard, Pince, (Wages,) 6 *C. Rob.* 207. 482  
 Vanharthals v. Halked, (Licences,) 1 *East*, 407. n.; 1 *Park on Ins.* 511. 195. 197  
 Vanhatton, Harman v., (Bottomry,) 2 *Vern.* 717. 63  
 Van Omeron v. Dowick, (Cargo, Masters,) 2 *Camp.* 42. 93. n. 223  
 Vaughan v. Fitzhugh, (Material Men,) 3 *Jur.* 1002. 230  
 — v. Lemecke, (in error,) (Licences,) 7 *D. & R.* 236; 1 *Bing.* 473; 8 *Moore*, 646. 200  
 Vaux, Schroeder v., (Licences,) 15 *East*, 52; 3 *Camp.* 84. n. 202. 205  
 Vecua, Gomez, (Prize Agents,) 2 *Hagg.* 341. 346. 341  
 Veley and Joaline v. Burder, (Courts,) 1 *Curtis*, 390. 117  
 Velthasan v. Ormsley, (Damage, Prohibition,) 3 *T. R.* 315. 122. n. 345, 346  
 Vennall v. Garner, (Damage,) 1 *C. & G. M.* 21; 3 *Tyr.* 85. 124. n. 126  
 Venus, Lassen, (Captors,) 6 *C. Rob.* 235. 86  
 —, Roadale, (Cartel,) 4 *C. Rob.* 355. 95  
 Verelst v. Verelst, (Allegations, Pleading,) 2 *Phil.* 147. 151. 17. 18. 292  
 Vernon, Gimblett, (Law of Nations, Responsibility of Owners,) 1 *W. Rob.* 316. 194. 278, 279  
 —, Jackson v., (Mortgagees,) 1 *H. Black.* 114. 293  
 Vesta, Thompson, (Salvage, Wreck,) 2 *Hagg.* 189. 193. 388. 511  
 Vibilia, Corbet, (Wages,) 2 *Hagg.* 228. 502, 503  
 —, Richardson, (Bottomry, Liens, Owners,) 1 *W. Rob.* 1. 5. 10. 14. 52. 62. 66. 68. 79. 210. 226. 271  
 Victoria, otherwise Alfred the Great, (Possession, Recapture,) *Edw.* 97. 298. 350  
 Vigilantia, Gerritz, (National Character, Prize, Trade with the Enemy,) 1 *C. Rob.* 1. 14. 239, 240. 242, 243, 244. 317. 458. 463  
 —, Reynaert, (Blockade, Further Proof, National Character,) 6 *C. Rob.* 122. 46. 175. 243  
 Ville de Varsovie, (Admiralty, Blockade, Captors, Head Money, Joint Capture, Practice, Royal Navy, Salvage, Witnesses,) 2 *Dodson*, 174. 184. 301. 305. 311. 313. 317. 7. 37. 85. 179. 180. 184. 304. 353. 361. 505. n.  
 Vine, Jay, (Prize, Salvage,) 2 *Hagg.* 1. 330. 362. 366. 374

Virgil, Wilson, (Damage, Pleadings,) 7 *Jér.* 1174; 2 *W. Rob.* 201. 205; 2 *Notes of Cases*, 499. 699. 124. 129. 132. 291  
 Virgin, (Bottomry,) 8 *Peters' (Amer.) Rep.* 538. 56. n. 65. n. 496. n.  
 Vixen, Hutchings, (Navigation Laws,) 1 *Dodson*, 136. 145. 151. 249. 256. 259  
 Vlierbloom v. Chapman, (Freight,) 13 *M. & W.* 230. 166  
 Volant, Merchant, (Bail, Damage, Licences, Masters, Owners, Security for Costs,) 1 *W. Rob.* 388. 34. 122. 138. 140. 200. 225. 275, 276. 410  
 Volcano, H. M. S. S., (Affidavits, Damage,) 3 *Notes of Cases*, 210. 9. n. 129. n.  
 Von Watteville, (Baron,) Raymond v., (Answers, Proctors,) 2 *Lee*, 495. 551. 21. 342  
 Vreede, Hoffker, (Bail, Prize Agents,) 1 *Dodson*, 2. 8. 30. 34, 35. 336. 339, 340  
 —, Ohlsen, (Trade with the Enemy,) 5 *C. Rob.* 231. 464  
 —, Scholtys, (Claimants,) 5 *C. Rob.* 5. n. 97  
 Vriendschap, Barends, (Prize,) 4 *C. Rob.* 166. 333  
 —, Goverts, (Licences,) 4 *C. Rob.* 96. 196. 206  
 —, Hansen, (Prize,) 6 *C. Rob.* 38. 322. 352  
 Vrouw Elizabeth, Probst, (National Character,) 5 *C. Rob.* 2. n. 243. 247  
 —, Hermina, Jonker, (Further Proof, Practice, Prize,) 1 *C. Rob.* 163. 168. 175. 306. 318  
 —, Margaretha, Jacobs, (Freight, Salvage, Tenders,) 4 *C. Rob.* 102. 304; 2 *Chitty's Gen. Prac.* 525; 9 *Jur.* 192. 172. 376. 380. 449  
 Vrow Anna Catharina, Mabts, (Claimants,) 5 *C. Rob.* 19. 97  
 —, (Freight,) 6 *C. Rob.* 269. 169  
 —, (National Character, Neutrals, Prize,) 5 *C. Rob.* 161. 167. 241. 243. 247. 264. 265. 320  
 —, Antoinette, (Contraband, Further Proof,) *Hay & Marriott*, 142. 107. 176  
 —, Cornelia, Dykstra, (Licences,) *Edw.* 349; 2 *Acton*, 66. 196. 206, 207  
 —, Deborah, (Licences,) 1 *Dodson*, 160. 167. 201. 209  
 —, Henrica, Hilek, (Freight,) 4 *C. Rob.* 343. 347. 169, 170  
 —, Johanna, (Captors,) 4 *C. Rob.* 348. 90  
 —, Okhen, (Blockade,) 2 *C. Rob.* 109. 42, 43  
 —, Judith, Volkerts, (Blockade, Further Proof, Owners,) 1 *C. Rob.* 152. 40. 45. 176. 271  
 —, Margaretha, (Further Proof,) *Hay & Marriott*, 219. 174  
 —, Crigsmann, (Neutrals,) 1 *C. Rob.* 336. 356. 246  
 —, Mina, Behrends, (Wages,) 1 *Dodson*, 234. 226. 477  
 Vryheid, Admiral De Winter, (Joint Capture,) 2 *C. Rob.* 16. 183, 184. 188. 190  
 Vryheid, *Hay & Marriott*, 188. 107

## W.

Waaksamheid, Van Nierop, (Convoy, Joint Capture,) 3 *C. Rob.* 1. 8. 111. 185. 191  
 Wagner v. Mears, (Paupers,) 2 *Hagg. (Eccl.)* 531. 282  
 Wainhouse v., Cowie (Licences,) 4 *Tunst.* 178. 204

|   | Page                        |  | Page                        |
|---|-----------------------------|--|-----------------------------|
| Wake v. Hillary & Son, (Prize,) 12 F. C. 556.   | 315. n.                     | Watson, Harris v., (Wages,) <i>Peake</i> , 72.   | 479                         |
| <i>Mor. No. 1., App. Prize.</i>   |                             | ——, Tranter v., (Prohibition,) 6 <i>Mod.</i> 12.;  |                             |
| Walker, Brown v., (Prohibition,) 2 <i>Show.</i> 406.  | 346                         | <i>Salk.</i> 35.; 2 <i>Ld. Raym.</i> 931.  | 346                         |
| ——, Butterworth v., (Prohibition,) 3 <i>Burr.</i> 1689.   | 344                         | Watt, (Salvage,) 2 <i>W. Rob.</i> 70.; 2 <i>Notes of Cases</i> , 216.  | 362. 382. 392               |
| —— v. Easterby, (Security for Costs,) 6 <i>Ves.</i> jun. 612.   | 414                         | Watts, Carsau v., (Prize,) 3 <i>Dougl.</i> 350.  | 390                         |
| ——, Edmonson v., (Wages,) 1 <i>Show.</i> 177.   | 472                         | Webb v. Brooke, (Ransom,) 3 <i>Tunst.</i> 6.   | 347                         |
| ——, Freeland v., (Licences,) 4 <i>Tunst.</i> 478.   | 201                         | ——, Hammond v., (Statutes,) 10 <i>Mod.</i> 282.  | 447                         |
| ——, Green v., (Admiralty,) 2 <i>Ld. Raym.</i> 893.  | 6. n.                       | Webster v. De Tastet, (Wages,) 7 <i>T. R.</i> 157.; 1 <i>Park on Ins.</i> 11.  | 471                         |
| ——, Hilliam v., (Security for Costs,) 1 <i>Hagg.</i> (Eccl.) 72.  | 412                         | —— v. Seekamp, (Material Men,) 4 <i>B. &amp; A.</i> 252.   | 229                         |
| ——, Ross v., (Admiralty, Pilots, Wages,) 2 <i>Wils.</i> 264.  | 5. n. 283. 473. 475, 476    | Webster's Case, (Treaties,) 2 <i>Knapp.</i> 386.   | 465                         |
| —— v. Walker, (Paupers,) 1 <i>Curtis</i> , 562.   | 282                         | Wedge, Milligan v., (Owners,) 12 <i>Add. &amp; E.</i> 737.; 4 <i>Per. &amp; E.</i> 714.  | 272                         |
| Wall, Maria v., (Security for Costs,) 2 <i>B. &amp; P.</i> 236.   | 411                         | Weguelin v. Weguelin, (Witnesses,) 2 <i>Curtis</i> , 507   |                             |
| Waller and Smyth v. Heseltine and Burgh, (Practice,) 1 <i>Phil.</i> 173.  | 305                         | Weir & Co., Wood & Co. v., (Material Men,) 1 <i>Bell</i> , 527. n. 3.; 2 <i>Bell</i> , 98. n. 1.   | 225. n.                     |
| Wall's (Count) case, (National Character,) 3 <i>Knapp.</i> 13.  | 241                         | Wellington, (Duke of,) Alexander v., (Prize,) 2 <i>Russ. &amp; M.</i> 35.  | 328. 332                    |
| Walpole v. Ewer, (Average, Bottomry,) 2 <i>Park on Ins.</i> 565. 898.   | 33. 76. n.                  | Wells v. Osmond, (Wages,) 6 <i>Mod.</i> 238.; 2 <i>Ld. Raym.</i> 1044.   | 472. 482                    |
| ——, Tinkler v., (Ship's Register,) 14 <i>East</i> , 226.  | 418                         | —— v. Williams, (Aliens, National Character,) 1 <i>Ld. Raym.</i> 282.; 1 <i>Salk.</i> 46.; <i>Lutw.</i> 35.; <i>Com. Dig. Ab. E.</i> 4.; 3 <i>B. &amp; P.</i> 114. | 15. 235                     |
| Walsb, Rex v., (Ship's Register,) 1 <i>A. &amp; E.</i> 481.; 3 <i>N. &amp; M.</i> 632.                          | 419                         | Welvaart, Cornelis, (Further Proof, National Character, Title, Trade with the Enemy,) 1 <i>C. Rob.</i> 122.  | 174. 244. 454. 458. 462     |
| Walsingham Packet, Bell, (Claimants, Prize,) 2 <i>C. Rob.</i> 77. 83.   | 98. 311                     | —— van Pillaw, Botter, (Blockade,) 2 <i>C. Rob.</i> 130.   | 41. 47                      |
| Walters, Newman v., (Salvage,) 3 <i>B. &amp; C.</i> 612.; <i>Abb. Sh.</i> 560.                                  | 360                         | Wemys v. Linzee, (Prize,) 1 <i>Dougl.</i> 324.   | 381                         |
| Wandringsman, (Further Proof,) <i>Hay &amp; Marriott</i> , 176.   | 176                         | Werldsborgaren, Lagerholm, (Freight,) 4 <i>C. Rob.</i> 17.   | 166                         |
| Wanstead, Morton, (Salvage military,) <i>Edw.</i> 268.  | 403. 405                    | Westerdeal v. Dale, (Material Men,) 7 <i>T. R.</i> 312.  | 226                         |
| War Onskan, Biedumpel, (Salvage military,) 2 <i>C. Rob.</i> 299.  | 405                         | Western v. Wildy, (Bottomry,) <i>Skis.</i> 152.  | 70                          |
| Ward v. Bell, (Costs,) 2 <i>Dowl.</i> 76.   | 112                         | Westmeath v. Westmeath, (Allegations, Costs, Practice,) 2 <i>Add.</i> 380.; 2 <i>Hagg.</i> (Eccl.) 193.  | 18. 115. 307                |
| Wargent v. Hollings, (Appeals,) 4 <i>Hagg.</i> (Eccl.) 246.   | 24                          | Westminster, (Mariners' Contracts, Salvage,) 1 <i>W. Rob.</i> 229. 235.  | 371. 384. 395               |
| Waring v. Cunliffe, (Interest,) 1 <i>Ves.</i> jun. 99.  | 181                         | Westmoreland, (Admiralty, Attachment, Wages,) 4 <i>Notes of Cases</i> , 173.   | 6. n. 29. n. 476. n.        |
| —— v. Scott, (Licences,) 4 <i>Tunst.</i> 605.   | 204                         | ——, Brigstock, (Wages,) 1 <i>W. Rob.</i> 216.  | 221. 227.                   |
| Warrior, Peache, (Agents, Possession, Title,) 2 <i>Dodson</i> , 288. 294. 298.                                  | 11. 163. 296, 297. 451, 452 | Weston v. Forster, (Bottomry,) 2 <i>Bing. M. &amp; C.</i> 693.   | 61                          |
| Warwick v. White, (Statutes,) <i>Burb.</i> 106.   | 447                         | Wharton, Barber v., (Wages,) <i>Ld. Raym.</i> 1452.; 1 <i>Com. Dig.</i> 274.   | 475                         |
| Washington, (Costs, Damage,) 5 <i>Jur.</i> 1067.  | 112. 125. 139               | —— v. Pits, (Prohibition,) 2 <i>Salk.</i> 548.   | 346                         |
| ——, Adams, (Prize,) 2 <i>Acton</i> , 30. n.   | 321                         | ——, Whisham, (Wages,) 3 <i>Hagg.</i> 148. n.   | 476                         |
| ——, Williamson, (Captors, Damage,) 6 <i>C. Rob.</i> 275.; 5 <i>Jur.</i> 1067.                                   | 86. 125                     | Wheeler v. Thompson, (Wages,) 1 <i>Stra.</i> 707.  | 476. 498                    |
| Wasser Hundt, Lorentzen (Affidavits, Blockade, Navigation Laws, Owners,) 1 <i>Dodson</i> , 172. n. 270. 272. n. | 10. 49. 259. 279            | ——, Vallerjo v., (Customs and Usages,) <i>Laff.</i> 631.   | 120                         |
| Waterhouse v. King, (Prize,) 2 <i>East</i> , 507.   | 390, 331                    | Whilelmina, Otto, (Trade with the Enemy,) 4 <i>C. Rob. App. A.</i> 4. 12. n., 13. n.   | 459, 460                    |
| Waterloo, Birch, (Salvage,) 2 <i>Dodson</i> , 438. 442.   | 375. 389. 391. 395          | Whilelmine, (Attachment, Practice, Proctors,) 1 <i>W. Rob.</i> 341. 355.; 2 <i>Notes of Cases</i> , 216.   | 30. 116. 302. 312. 342, 343 |
| Waters, Anthony v., (Licences,) 5 <i>Tunst.</i> 711.  | 207                         | ——, (Salvage,) 2 <i>Notes of Cases</i> , 19.   | 399. n.                     |
| ——, Feize r., (Licences,) 2 <i>Tunst.</i> 248.  | 197. 198. 206               | Whiah & Woollatt v. Hesse, (Allegations,) 3 <i>Hagg.</i> (Eccl.) 680.  | 18                          |
| ——, Flindt v., (Aliens,) 15 <i>East</i> , 260.  | 15                          | Whitby & Parson, Chapman v., (Allegations,) 3 <i>Phil.</i> 370. 372.   | 18, 19                      |
| Walkin and Bligh v. Brent, (Practice,) 1 <i>Curtis</i> , 266.   | 307                         | White v. Baring, (Masters,) 4 <i>Esp.</i> 22.  | 224                         |
| Watkinson v. Bernardiston, (Material Men,) 2 <i>W. Rep.</i> 367.  | 227                         | —— v. Brazier, (Costs,) 3 <i>Dowl. P. C.</i> 499.  | 114                         |

|   | Page          |  | Page                   |
|---|---------------|--|------------------------|
| White, Carey v., (Material Men,) 1 <i>Bro. Par. Cases</i> , 224.                | 229           | William Penn, Crawford et al. v., (Aliens, Bottomry, Cartel, National Character,) <i>Peters' (Amer.) Rep. C. Rep.</i> 106.; 3 <i>Wheaton's (Amer.) Rep.</i> 484.     | 102. 461               |
| — v. Greathead, (Security for Costs,) 15 <i>Ves.</i> 2.                         | 412           | 12. n. 14. n. 61. n. 79. n. 94. n. 95. n. 242. n.  |                        |
| —, Jones v., (Damage,) 2 <i>Jur.</i> 363.; 1 <i>Arn.</i> 85.                    | 127           | —, Trefry, (Contraband, Trade with the Enemy,) 5 <i>C. Rob.</i> 385.   | 102. 461               |
| — v. Mattison, (Wages,) 2 <i>Stark.</i> 525.                                    | 501           | — & Grace, (Trade with the Enemy,) <i>Hay &amp; Marriott</i> , 76.   | 463                    |
| —, Pigot v., (Flag Share,) 1 <i>H. Black.</i> 265. n.; 4 <i>Dougl.</i> 303.     | 160           | — & Mary, Dickson, (Joint Capture,) 4 <i>C. Rob.</i> 381.  | 192                    |
| — v. Root, (Statutes,) 2 <i>T. R.</i> 374.                                      | 448           | Williams, Evans v., (Material Men,) <i>Abb. Sk.</i> 128.   | 229                    |
| —, Warwick v., (Statutes,) <i>Bush.</i> 106.                                    | 447           | — v. Hall, (Evidence,) 1 <i>Curtis</i> , 606.  | 157                    |
| — v. Wilson, (Wages,) 2 <i>B. &amp; P.</i> 116.                                 | 479           | — v. Manhill, (Navigation Laws,) 1 <i>Moore</i> , 168.; 7 <i>Tunst.</i> 468.   | 258                    |
| —, Yates v., (Damage,) 4 <i>Bing. N. S.</i> 272.; 5 <i>Scott</i> , 640.         | 127           | — v. Marshall, (Licences,) 6 <i>Mount.</i> 390.; 3 <i>Marsh.</i> 92.; 1 <i>Moore</i> . 168.; 7 <i>Tunst.</i> 468.  | 203                    |
| Whitmore, Fitzgerald v., (Security for Costs,) 1 <i>T. R.</i> 362.              | 413           | —, Miles v., (Statutes,) 1 <i>P. Wms.</i> 252.; 10 <i>Mod.</i> 245.; 3 <i>Co. Rep.</i> 83.; <i>Hob.</i> 97.; 11 <i>Mod.</i> 150.                                     | 446                    |
| —, Hullman v., (Licences,) 3 <i>M. &amp; S.</i> 337.                            | 199           | —, Panton v., (Practice,) 2 <i>Curtis</i> , 552.   | 305                    |
| —, Power v., (Average,) 4 <i>M. &amp; S.</i> 141.                               | 32            | — v. Pritchard, (Statutes,) 4 <i>T. R.</i> 2.  | 446                    |
| —, Vandyk v., (Licences,) 1 <i>East</i> , 475.                                  | 195. 197. 203 | — v. Steadman, (Bottomry,) <i>Holt's Rep.</i> 126.; <i>Skin.</i> 345.; 1 <i>Eq. Cases</i> , <i>Abr.</i> 372.; 2 <i>Ch. Cases</i> , 130.; 2 <i>Park on Ins.</i> 910.  | 70. 70. n.             |
| Whittaker, King v., (Navigation Laws,) 1 <i>Hagg.</i> 145.                      | 257. 260      | —, Wells v., (Allegations, National Character,) 1 <i>Lutw.</i> 35.; 1 <i>Salk.</i> 46.; 1 <i>Ld. Raym.</i> 282.; <i>Comm. Dig. Ab.</i> 24.; 3 <i>B. &amp; R.</i> 44. | 15. 235                |
| Wick v. Strutt, (Bail,) <i>Comb.</i> 320.                                       | 34            | Williamson, Joyce v., (Average, Bottomry,) 3 <i>Dougl.</i> 164.; 2 <i>Park on Ins.</i> 563. 896.; 2 <i>Marsh on Ins.</i> 760.  | 33. 60. 62             |
| Wiggan v. Branthwaite, (Wreck,) 12 <i>Mod.</i> 260.                             | 515           | Willis v. Garbutt, (Security for Costs,) 1 <i>F. &amp; J.</i> 511.   | 418                    |
| Wiggins v. Ingleton (Wages,) 2 <i>Ld. Raym.</i> 211.                            | 480. n.       | — v. Lords' Commissioners of Appeal in Prize Causes, (Captors, Prize, Prize Agents,) 5 <i>East</i> , 28.; 1 <i>Smith</i> , 339.                                      | 91. 311. 312. 331. 339 |
| Wight, Forde, (Convoy, Salvage military,) 5 <i>C. Rob.</i> 316. 320.            | 111           | —, Madraso v., (Slave Trade,) 3 <i>B. &amp; A.</i> 353.  | 440                    |
| Wildman, Plummer v., (Average,) 3 <i>M. &amp; S.</i> 482.; <i>Abb. Sk.</i> 478. | 52            | —, Slater v., (National Character,) 1 <i>Beav.</i> 355.  | 250                    |
| Wildy, Western v., (Bottomry,) <i>Skin.</i> 152.                                | 70            | Willison v. Pattison, (Aliens, Trade with the Enemy,) 7 <i>Tunst.</i> 459.; 1 <i>Moore</i> , 133.  | 14. 457                |
| Wilhelm Frederick, Noorman, (Wages,) 1 <i>Hagg.</i> 138.                        | 478           | Wilson, Att.-Gen. v., (Navigation Laws,) 3 <i>Price</i> , 431. 441.  | 257. 259               |
| Wilhelmina, Carlson, (Contraband, Freight,) 2 <i>C. Rob.</i> 101.               | 110. 170      | — v. Bird, (Ransom,) 1 <i>Lord Raym.</i> 22.   | 347                    |
| — Eleonora, Mohr, (Freight,) 3 <i>C. Rob.</i> 234.                              | 167           | — v. Dickson, (Owners,) 2 <i>B. &amp; Ald.</i> 2; <i>Abb. Sk.</i> 400.   | 274. 275               |
| Wilhelmsberg, Lubben, (Captors, Demurrage,) 5 <i>C. Rob.</i> 144.               | 86. 90. 143   | — v. Foot, (Costs,) <i>Bull. N. P.</i> 335.  | 115                    |
| Wilkins v. Carmichael, (Masters, Material Men,) 3 <i>Dougl.</i> 101.            | 224. 227      | — v. Forster, (Prize, Title,) 6 <i>Tunst.</i> 25.; 1 <i>Marsh.</i> 425.; <i>Abb. Sk.</i> 27.   | 332. 454               |
| — v. Despard, (Navigation Laws, Royal Navy,) 5 <i>T. R.</i> 112.                | 261. 352      | —, Handyside v., (Damage,) 3 <i>Car. &amp; P.</i> 528.   | 130                    |
| Wilkinson, Briggs v., (Freight,) 9 <i>D. R.</i> 871.; 7 <i>B. &amp; C.</i> 30.  | 169           | — v. Heather, (Aliens, Mortgagees, National Character,) 5 <i>Tunst.</i> 642.   | 211. 231. 234          |
| —, Cliffe v., (Security for Costs,) 4 <i>Sim.</i> 123.                          | 411           | — v. M'Math, (Costs,) 3 <i>Phill.</i> 92.  | 112                    |
| — v. Dalton, (Witnesses,) 1 <i>Add.</i> 339.                                    | 509           | —, Marshall v., (Bottomry,) <i>Abb. Sk.</i> 148.   | 52                     |
| — v. Frasier, (Wages,) 4 <i>Esp.</i> 182.                                       | 487           | — v. Maryatt, (Navigation Laws,) 6 <i>C. Rob.</i> 346.   | 255. n.                |
| — v. Gordon, (Allegations,) 2 <i>Add.</i> 171.                                  | 17            | —, Maryatt v., (Trade with the Enemy,) 1 <i>B. &amp; B.</i> 430.   | 457                    |
| —, Rhind v., (Witnesses,) 2 <i>Tunst.</i> 237.                                  | 208           | — v. Miller, (Cargo,) 2 <i>Stark.</i> 1.   | 93. n.                 |
| William, (Tenders,) 5 <i>Notes of Cases</i> , 108.                              | 448. n.       | — v. Steam-boat Ohio, (Wages,) <i>Gilpin's (Amer.) Rep.</i> 505.   | 476. n.                |
| — Beckford, Muirhead, (Salvage,) 3 <i>C. Rob.</i> 355.                          | 374. 375. 378 | — v. Minchin, (Security for Costs,) 1 <i>Dougl. P. C.</i> 299.; 2 <i>C. &amp; J.</i> 87.; 2 <i>Tyr.</i> 166.   | 414                    |
| —, Brandt, jun., (Salvage,) 2 <i>Notes of Cases</i> , ( <i>Suppl.</i> lxxvii.)  | 369. n.       | —, Vanbrymen v., (Aliens,) 9 <i>East</i> , 321.  | 15                     |
| — Hamilton, Hughes, (Salvage,) 3 <i>Hagg.</i> 168. n.                           | 381           | —, White v., (Wages,) 2 <i>B. &amp; P.</i> 116.  | 479                    |
| — Hannington, (Salvage, Tenders,) 9 <i>Jur.</i> 631.                            | 375. 449      | — and another, O'Mealey v., (National Character,) 1 <i>Camp.</i> 482.  | 235. 237               |
| —, Hastie, (Captors,) 6 <i>C. Rob.</i> 316.                                     | 86. 89.       |  |                        |
| —, Howard, (Licences,) 2 <i>Dodson</i> , 55.                                    | 209           |  |                        |
| — Money, Jackson, (Wages,) 2 <i>Hagg.</i> 136.                                  | 487           |  |                        |

|  | Page   |  | Page  |
|--|--|--|---|
| Wilson's, Hunter, (Mortgagees, Salvage,) 1 <i>W. Rob.</i>                              | 232. 355   | Wright, Shepherd v., (Average,) 1 <i>Show. 18.</i>   | 31. n.  |
| Winbled v. Malmberg, (Evidence,) 1 <i>Esp.</i>   | 454. 151   | Wyatt, Ingram v., (Examiners, Fraud, Witnesses,) 1 <i>Hagg. (Eccl.)</i>                      | 94. 100. 103. 384.  |
| Windsor Castle, (Possession,) 1 <i>Notes of Cases,</i>                                 | 118. 297. n.   | Wyllie v. Mott & French, (Answers, Contempt, Witnesses,) 1 <i>Hagg. (Eccl.)</i>              | 33. 38. 157. 163. 508. 509                                    |
| Queen v., (Salvage,) 2 <i>Notes of Cases (Suppl.)</i>                                  | 53. 382. n.  | Wynne, Gore v., (Bottomry,) <i>M. &amp; M.</i>   | 393. 60. n.   |
| Winford (Lady Cookes) v. Hillier, (Witnesses,) 1 <i>Lee,</i>                           | 274. 508   |  |   |
| Winson, Strelley v., (Owners,) 1 <i>Vern.</i>  | 297.; <i>Skin.</i> 230.; <i>Abb. Sh.</i> 100. 268              | X.   |   |
| (Winwick) Barton and others v. Field, (Appeals, Inhibition,) 4 <i>Moore,</i>           | 273.; 8 <i>Jur.</i> 113. 25. 181                               | Xavier (Captors, Droits of Admiralty,) <i>Hay &amp; Marriott,</i>                            | 219. 82. 147  |
| (—) v. The Queen, (Appeals, Attachment, Slave Trade,) 2 <i>Moore,</i>                  | 19. 25. 29. 423. 424   | Y.   |   |
| Winteringham, Delamainer v., (Wages,) 4 <i>Camp.</i>                                   | 184. 481   | Yallop Exp., (Navigation Laws, Ship's Register,) 15 <i>Ves. jun.</i>                         | 60. 250. 418  |
| Withers, Goss v., (Recapture,) 2 <i>Burr.</i>  | 683. 349   | Yardley, Tessimond v., (Costs,) 5 <i>B. &amp; Add.</i>                                       | 458. 113  |
| Witt, Cotton v., (Costs,) 4 <i>Tunst.</i>  | 55. 114  | Yates v. White, (Damage,) 4 <i>Bing. N. S.</i>   | 272.; 5 <i>Scott,</i> 640. 127                                |
| Wittenoom, Crespigny v., (Statutes,) 4 <i>T. R.</i>                                    | 793. 447   | Yeates v. Hall, (Wages,) 1 <i>T. R.</i>  | 73. 79. 479. 481  |
| Wohlforth, Steenveld, (Licences,) 1 <i>Dodson,</i>                                     | 305. 206   | Yeo, Mackenzie v., (Evidence,) 2 <i>Curtis,</i>  | 868. 875.; 1 <i>Phil. on Ev.</i> 139. 5th ed. 155             |
| Wolf v. Claggett, (Navigation Laws,) 3 <i>Esp.</i>                                     | 257. 260   | Yonge Helena, (Prize,) <i>Hay &amp; Marriott,</i>  | 141. 325  |
| Wolfarth, Harting, (Licences,) <i>Edw.</i>   | 365. 205   | — Jan, Block, and other ships, (Trade with the Enemy,) 6 <i>C. Rob.</i>                      | 42. n. 463  |
| Wolff, Smart v., (Freight, Prohibition,) 3 <i>T. R.</i>                                | 323. 347. 164. 344. 345  | Yorkshireman, Foreman, (Damage,) 2 <i>Hagg.</i>  | 30. n. 128  |
| Wolsley, Sir C., Robinson v., (Witnesses,) 2 <i>Lee,</i>                               | 421. 506   | Yougenheim v. Lane, (Costs, Paupers,) 4 <i>Dowl. P. C.</i>                                   | 482.; 1 <i>M. &amp; W.</i> 136.; 1 <i>Gale,</i> 343. 115. 282 |
| — Sir W., Robins v., (Admiralty, Answers, Evidence,) 1 <i>Lee,</i>                     | 620.; 2 <i>Lee,</i> 34. 443. 475. 9. 20. 156                   | Young, Exp., (Liens, Navigation Laws, Owners,) 2 <i>V. &amp; B.</i>                          | 242. 211. 250. 269  |
| — et al., v. The Nimrod, (Wages,) <i>Gilpin's (Amer.) Rep.</i>                         | 83. 496. n.  | — Jacob and Johanna, Visser, (Prize, Trade with the Enemy,) 1 <i>C. Rob.</i>                 | 19. 317. 324. 463   |
| — & Co. v. Weirs, (Material Men,) 1 <i>Bell,</i>                                       | 527. n. 3.; 2 <i>Bell,</i> 98. n. 1. 225. n.                   | — Jolly v., (Freight,) 1 <i>Esp.</i>   | 186. 172  |
| — and others v. Goodlake, Helps, and Hitchings, (Practice,) 2 <i>Curtis,</i>           | 97. 304  | — & Smith v. Richards, (Evidence,) 2 <i>Curtis,</i>  | 374. 157  |
| — v. Hamilton, (Material Men,) <i>Dom. Proc.</i>                                       | 15th of June, 1789. 227  | Yrisarri v. Clement, (National Character,) 3 <i>Bing.</i>                                    | 432.; 11 <i>Moore,</i> 308.; 2 <i>Car. &amp; P.</i> 223. 234  |
| Wood, Seccomb v., (Damage,) 2 <i>Mood. &amp; Rob.</i>                                  | 290. 137   | Z.   |   |
| Woodbridge, Munnings, (Captors, Capture, Ship's Register, Slave Trade,) 1 <i>Hagg.</i> | 63. 72. 77. 21. 26. 89. 93. 419. 442                           | Zacheman, Kræplein, (Contraband, Demurrage,) 5 <i>C. Rob.</i>                                | 152. 108. 143   |
| Woodrop Sims, Jones, (Damage,) 2 <i>Dodson,</i>  | 85. 123. 130   | Zee Star, Muller, (Captors, Demurrage,) 4 <i>C. Rob.</i>                                     | 71. 92. 143   |
| Woods v. Russell, (Material Men, Owners,) 1 <i>D. &amp; R.</i>                         | 587.; 5 <i>B. &amp; Ad.</i> 942.; <i>Abb. Sh.</i> 78. 227. 275 | Zelden Rust, (Prize,) <i>Hay &amp; Marriott,</i>   | 220. 325  |
| — v. Woods, O. I. P., (Evidence, Witnesses,) 2 <i>Curtis,</i>                          | 522. 527. 151. 509   | —, Rozenna, (Contraband,) 6 <i>C. Rob.</i>   | 93. 103. 107  |
| Woodward v. Bontham, (Masters, Wages,) 1 <i>Ld. Raym.</i>                              | 3. 224. 475  | Zepherina, Lima, (Captors, Evidence, Joint Capture,) 2 <i>Hagg.</i>                          | 317. 318. n. 84. 153. 185. 191. 192                           |
| — v. Larking, (Ransom, Ship's Register, Title,) 3 <i>Esp.</i>                          | 286. 347. 418. 455   | —, (Droits of Admiralty,) 5 <i>C. Rob.</i>   | 280. 84. 147  |
| Woolf v. Beard, (Damage,) 8 <i>C. &amp; P.</i>   | 373. 125. n.   | Zephyr, (Bottomry,) 3 <i>Mason's (Amer.) Rep.</i>  | 341. 72. n., 73. n.   |
| Woolmore, Elsworth v., (Wages,) 5 <i>Esp.</i>  | 84. 479  | —, Arrowsmith, (Salvage,) 2 <i>Hagg.</i>   | 43. 47. 369. 371. 399   |
| Wray v. Brown, (Security for Costs,) 6 <i>Bing. N. C.</i>                              | 271.; 8 <i>Dowl. P. C.</i> 279.; 4 <i>Jur.</i> 271. 412        | Zephyrus, Blake, (Salvage,) 1 <i>W. Rob.</i>   | 329. 355. 363. 377  |
| —, Siff'kin v., (Stoppage in Transitu,) 6 <i>East,</i>                                 | 371. 446   | Zodiac, Scott, (Bottomry, Material Men, Registrar and Merchants, Royal Navy,) 1 <i>Hagg.</i> | 320. 326. 332. 66. 70. 77. 78. 226. 351. 352                  |
| Wright v. Burnard, (Evidence,) 2 <i>Esp.</i>   | 700. 152   | Zulema, Alfton, (Further Proof, Prize,) 1 <i>Acton,</i>                                      | 17. 175. 322  |
| —, King of Greece v., (Security for Costs,) <i>W. W. &amp; D.</i>                      | 594.; 6 <i>Dowl.</i> 12.; 1 <i>Jur.</i> 944. 413               | Zulueta, Regina v., (Slave Trade,) 1 <i>Car. &amp; K.</i>                                    | 215. 423. 424   |
| — v. Hutchinson, (Aliens,) 15 <i>F. C.</i>   | 435. 12. n.  |  |   |



# ADMIRALTY DIGEST.

## ADMIRALS.

### I. OF THE LORD HIGH ADMIRAL.

### II. OF ADMIRALS GENERALLY.

#### I. OF THE LORD HIGH ADMIRAL.\*

1. The King holds the office of Lord High Admiral in a capacity distinguishable from his regal character; and although he is the fountain of all prize, he has conveyed away his interest in it to various persons; to the commanders and crews of his own ships; to his other subjects by letters of marque; and to the Lord High Admiral of England. *The Mercurius, Gerdes*, 1 C. Rob. 81.

2. The rights of the Lord High Admiral are of great antiquity and splendour, and are entitled to great attention and respect. At the same time it is not to be understood that an extension of these rights beyond their absolute limits is to be favoured by construction; they are parts and parcels of the ancient rights of the Crown, communicated by former grants to that officer under a very different state and administration of his office from that which now exists in practice. *The Rebeckah, Thompson*, 1 C. Rob. 229.; *The Maria Françoise, Le Bourch*, 6 C. Rob. 297.

3. The grants from the Crown of these rights will be construed strictly against the grantee, as all grants of the Crown are. *The Rebeckah, Thompson*, 1 C. Rob. 229.; *The Gertruyda, De Vries*, 2 C. Rob. 219.

4. The grant to the Lord High Admiral, whatever it conveys, carries with it a total

and perpetual alienation of the rights of the Crown, and nothing short of an act of parliament can restore them. But the grant to captors is nothing more than a mere temporary transfer of the beneficial interest. Against captors standing on such an interest, the construction is the same as it would be against the Crown itself, because they cannot be pronounced against, in favour of the Lord High Admiral, without pronouncing in effect that a perpetual alienation of the Crown's right in prize taken under the circumstances of war had already been made to the Lord High Admiral. *The Maria Françoise, Le Bourch*, 6 C. Rob. 282.

5. It may be presumed that there was at all times a Lord High Admiral, the exercising the office by commissioners being of modern date. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 271. 287.

See DROITS OF ADMIRALTY.

#### II. OF ADMIRALS GENERALLY.

6. The actual wrongdoer is the only person responsible in a Court of Admiralty for injuries of seizure; and if the Admiral of the station is not privy to the fact, a suit will not be entertained against him. *The Mentor, Campbell*, 1 C. Rob. 179.

See FLAG SHARE.

\* 1. Of the antiquity and origin of the office of Lord High Admiral in England, see *Godolphin's Admiral Jurisdiction*, p. 22.; and see the Catalogue of Lord High Admirals from the time of King John to that of Charles II., in the Appendix thereto.

2. The office and duties of the Lord High Admiral are considered in *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 279.

3. The 2 *William & Mary*, c. 2. recognizes and confirms the right of the Commissioners for execut-

ing the office of Lord High Admiral to exercise the same authorities and powers as belong to the Lord High Admiral himself; and the 7 & 8 G. 4. c. 65. declares that all powers conferred on such Commissioners shall extend to the Lord High Admiral and his counsel.

4. The Lord High Admiral anciently had a tenth part of all prize goods, but by the 13 G. 2. c. 4. s. 2. that right is taken away.

## ADMIRALTY.

## I. OF COURTS OF ADMIRALTY GENERALLY.

1. *Of the Admiralty Jurisdiction of Courts of Equity* — see COURTS.

## II. OF THE HIGH COURT OF ADMIRALTY OF ENGLAND.

1. *Of the Jurisdiction of Courts of Common Law with reference to* — see PROHIBITION.
2. *Of the Jurisdiction of Courts of Equity with reference to* — see COURTS, cap. I. sect. 2.

## III. OF THE PROCEEDINGS IN THE HIGH COURT OF ADMIRALTY.

## IV. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY.

1. *Generally.*
2. *With reference to the locality of the cause of action.*
3. *With reference to the execution of sentences of Courts of Admiralty abroad.*
4. *To enforce its process.*
  - (a) *Generally.*
  - (b) *In cases of rescue.*
5. *To direct issues and new trials.*
6. *With reference to Vice-Admiralty Courts.*
7. *Miscellanea.*

*And see the respective titles with reference to the jurisdiction of the High Court of Admiralty on each of such heads.*

## V. OF THE PRIZE JURISDICTION OF THE HIGH COURT OF ADMIRALTY — see PRIZE.

1. *As to head-money* — see HEAD-MONEY.

2. *As to joint capture* — see JOINT CAPTURE.

3. *As to prize agents* — see PRIZE AGENTS.

4. *As to ransom* — see RANSOM.

5. *As to military salvage* — see SALVAGE (military).

## VI. OF THE COURT OF ADMIRALTY OF THE CINQUE PORTS — see CINQUE PORTS.

## VII. OF VICE ADMIRALTY COURTS.

1. *Of the jurisdiction of* —

- (a) *Generally.*

- (b) *As to the navigation laws* — see NAVIGATION LAWS.

- (c) *In suits for possession of ships* — see POSSESSION.

- (d) *In matters of prize* — see PRIZE.

- (e) *Over prize agents* — see PRIZE AGENTS.

- (f) *In slave seizures* — see SLAVE TRADE.

- (g) *In cases of title to ships* — see TITLE.

2. *Of the proceedings in* —

- (a) *Generally.*

- (b) *On appeal.*

3. *Miscellanea.*

4. *Of the Courts of Appeal from* — see APPEAL.

## I. OF COURTS OF ADMIRALTY GENERALLY.

1. Sentences in Courts of Admiralty ought to bind generally according to the *jus gentium*. *Hughes v. Cornelius*, (34 Car. 2.), Skin. 59., 6 Viner's Abr. 519.

2. A sentence pronounced in a foreign Admiralty Court is conclusive here, if it be a final and not an interlocutory sentence. *Jurado v. Gregory* (1668), 1 Lev. 267.; S. C. 1 Vent. 32., 1 Sid. 418.; S.P. *Hughes*

*v. Cornelius* (1681), 2 Show. 232.; S. C. Ld. Raym. 473.; S. C. Skin. 59.

3. Peremptory sentence in a Court of Admiralty beyond sea will conclude the parties here. *Newland v. Horseman*, 1 Vern. 21.

## II. OF THE HIGH COURT OF ADMIRALTY OF ENGLAND.\*

4. The Court of Admiralty does not claim the character of a court of general equity,

\* 1. By the 3 & 4 Vict. c. 65. s. 19, the same privileges and protection as are possessed by the judges of the superior Courts of Common Law are allowed to the judge of the Court of Admiralty.

2. The 3 & 4 Vict. c. 66. regulates the salary, emoluments, &c. of the judge, registrar, marshal,

and other officers of the High Court of Admiralty of England.

3. The Court of Admiralty is not a Court of record. 12 Co. 104., 4 Inst. 135., 13 Rep. 53., 6 Viner's Abr. 521, 522., 12 Rep. 104.; but see *Godolphin's Admiralty Jurisdiction*, cap. X. p. 119. et seq. See post, No. 45.

but is bound by its commission and constitution to determine the cases submitted to its cognizance upon equitable principles, and according to the rules of natural justice. *The Juliana, Ogilvie*, 2 Dodson, 521.

5. The Court of Admiralty is a court of equity. *The Minerva, Bell*, 1 Hagg. 357.; *The Trident, Simson*, 1 W. Rob. 35.

6. The Court of Admiralty exercises a jurisdiction equitable as well as legal. *The Harriet, Bulmer*, 1 W. Rob. 192.

### III. OF THE PROCEEDINGS IN THE HIGH COURT OF ADMIRALTY.\*

7. The Court of Admiralty is governed by the civil law, the law marine, and the law merchant, unless where controlled by the statute law and the authority of the municipal courts. *The Neptune, Cumberlege*, 3 Hagg. 136.

8. The rules by which Courts of Admiralty proceed are the law of nations, and

such treaties as particular states have agreed should be engrafted on that law; and it is not competent to one nation to add to the law of nations by its own arbitrary ordinances without the concurrence of other nations. *Pollard v. Bell*, 8 T. R. 434., 2 Park on Ina. 731.

9. Where the libel in the Admiralty was against the ship and the party, the Court of Queen's Bench granted a prohibition as to the party, except so far as it was necessary to make him a party to the condemnation of the ship. *Johnson v. Shepney*, 6 Mod. 79., 14 Viner's Abr. 300.

See PRACTICE.

### IV. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY OF ENGLAND.

#### 1. Generally.†

10. Whether the Court of Admiralty has or has not jurisdiction depends upon the

\* 4. The Court of Admiralty proceeds according to the course of the civil law. 12 Co. 104., 4 Inst. 135., 13 Rep. 53., 6 Viner's Abridgment, 521, 522., 12 Rep. 104., 2 Chitty's Gen. Practice, 535., and see evidence of Sir Herbert Jenner before the Select Committee of the House of Commons on Admiralty Courts, p. 42. There is, however, much wholly independent of the civil law course of proceeding; and, in particular, the judge of the Court of Admiralty may, as well in civil as criminal cases, have the assistance of a jury. 2 Chitty's Gen. Practice, 535.; and see note to *The Ruchers*, 4 C. Rob. 74.

5. The proceedings of the Courts of Admiralty bear much resemblance to those of the civil law, but are not entirely founded thereon. They likewise adopt and make use of other laws as occasion requires, such as the Rhodian laws and the laws of Oleron, for the law of England does not acknowledge or pay any deference to the civil law, considered as such, but merely permits its use in such cases where it judges its determinations equitable, and therefore blends it with other marine laws, the whole being corrected, altered, and amended by acts of parliament and common usage: so that out of this composition a body of jurisprudence is extracted, which owes its authority only to its reception here by consent of the Crown and people. 3 Stephens' Black. Comm. 726.

6. The Court of Admiralty has power to convene and have the assistance of two or more naval and other personages to assist its judgment. 2 Chitty's Gen. Practice, 510. See TRINITY MASTERS.

7. The first process in the Admiralty is against the ship and goods. *Godb.* 260. And no other process can be executed on the water. *Sir L. Jen.* vol. i. 82.

8. The first process in the Court of Admiralty is frequently by arrest of the defendant's person, as in the instance of a sea battery, upon which the defendant must find bail, or *fade jussors* in the nature of bail. (*Clerke's Prax. Adm.* 11., 1 *Roll. Ab.* 531.,

*Raym.* 78., 2 *Ld. Raym.* 1216., 3 *Black. Comm.* 108, 109.) And in case of default the bail and principal may be imprisoned. 1 *Roll. Ab.* 531., *Godb.* 193. 260., 3 *Black. Comm.* 109., 2 *Chitty's Gen. Practice*, 536.

9. After the execution of process, the defendant shall give caution or security, *Godb.* 260.; and the caution may bind the heirs, for by the civil law that comprehends his executors or administrators. *Godb.* 261. If a libel be founded upon a contract registered beyond sea, the plaintiff, upon his oath, exhibits his copy, which the defendant must confess or deny. *Sir L. Jen.* vol. i. 82. If he confess it, it is so much a proof of the instrument that the Court will judge upon the contents. *Ibid.* and 1 *Com. Dig.* 275.

10. To the libel the defendant ought to make answer. He may plead matter for his discharge, which will be good by law; and if it be refused, or determined contrary to a statute, a prohibition shall go; as the Statute of Limitations. *Hard.* 502.

† 11. A sentence in the Admiralty will be final; and the property of a ship taken upon the sea, after a determination there, shall not be tried in trover. *R. 3 Mod.* 194. *Vide Sho.* 6., *Carth.* 32., *Skin.* 59., *Raym.* 473. So, after a sentence there, it shall not be examined here in equity. 1 *Ver.* 21. *Ca. Ch.* 237, 238.

12. The Court of Admiralty has jurisdiction to try and determine most maritime causes or suits for private injuries which, although had the same transaction occurred on shore, would, in their nature, have been of common law cognizance, yet, having been either committed on the high seas, or connected with maritime transactions, are therefore considered better to be examined and remedied in this peculiar Court; which, from its very constitution and practice, is better informed upon nautical subjects than any common law Court, especially as it has power to convene and have the assistance of two or more naval and other personages to assist its judgment. 2 *Chitty's Gen. Practice*, 510.

subject-matter. *Menetone v. Gibbons*, 3 T. R. 267.

11. Wherever the Admiralty has not original jurisdiction of the cause, though there arise a question in it proper for its cognizance, yet that alters not nor takes away the power of the common law. If, however, the Admiralty have jurisdiction over the cause, it shall have jurisdiction over the incidents, though a question arise proper for the common law. After sentence, if it appear that the matter contained in the libel is triable at law, prohibition will be granted. *Tremoulin v. Sands*, (9 W. 3.), Comb. 462, 463., 6 Viner's Abr. 516.\*

12. In a case relating to the jurisdiction of the Court of Admiralty on a deed of hypothecation of a ship by the master: *Held*, in the Queen's Bench, that if the Court of Admiralty have jurisdiction over the subject-matter, the circumstance of the instrument being under seal does not deprive the Admiralty of its jurisdiction. *Menetone v. Gibbons* (1789), 3 T. R. 267.

13. Where the Court of Admiralty has given a sentence, it shall be taken to have had jurisdiction, unless the contrary appear on the face of the sentence. *Ladbroke v. Crickett* (1788), 2 T. R. 649.

14. If the Admiralty have no jurisdiction over the subject-matter, the whole is *coram non judice*. *Ibid.* 653.

15. And the sentence being a nullity, is at any time impugnable. *Menetone v. Gibbons* (1789), 3 T. R. 269.

16. The jurisdiction of the Admiralty subsists as long as the shore is covered with water. *Regina v. The Pauline*, 9 Jur. 286., 2 W. Rob. 363.

17. By the ancient maritime law the Court of Admiralty has an equity to moderate or supersede extortionate contracts made under the pressure of necessity arising out of the situation of a vessel at sea. This jurisdiction might embrace a case of extortionate contract for pilotage services. *The Nelson, Main*, 6 C. Rob. 231.

18. Courts of Admiralty and Courts of

Prize are all liable to the controlling authority which the Courts of Westminster Hall have from time to time exercised for the purpose of preventing them from exceeding the jurisdiction given to them; the general ground of prohibition being an excess of jurisdiction, when they assume to act in matters not within their cognizance. *Grant v. Gould*, 2 H. Black. 69. 100.

19. All maritime nations have that common interest in preserving the safe navigation of the seas that will authorize their respective Courts of Admiralty to entertain occasionally questions relating to the acts and interests of foreigners, under circumstances bringing the case within their local jurisdiction, and more particularly in a case in which individuals of the adjudicating country may be parties. *The Calypso*, 2 Hagg. 213.

20. Where both the parties in a suit are foreigners, the important consideration which regulates the jurisdiction of the Court, is whether the case be *communis juris* or not. *The Johann Friederich*, 1 W. Rob. 38.

## 2. With reference to the locality of the cause of action.

21. By 13 Rich. 2. c. 5. it is accorded and assented that the Admirals and their deputies shall not meddle from thenceforth of any thing done within the realm, but only of a thing done upon the sea, as it hath been used in the time of King Edward (grandfather of Richard 2.).

22. By 15 Rich. 2. c. 3. it is declared and established that of all manner of contracts, pleas, and quarrels, and all other things arising within the bodies of counties as well by land as by water, and also of wreck of the sea, the Admiral's Court shall have no manner of cognizance, power, nor jurisdiction; but the same and all other things arising within the bodies of counties as well by land as by water, as aforesaid, and also wreck of the sea, shall be tried and determined by the laws of the land, and

13. If part of any contract or other cause of action arise upon the sea and part on the land, the common law excludes the Admiralty Court from its jurisdiction; for, part belonging properly to one cognizance, and part to another, the common or general law takes place of the particular. 3 Stephens' Black. Comm. 725.

14. In general the Court of Admiralty has no jurisdiction over ordinary contracts, as in case of a

bond executed on ship board to pay money in London, nor, in general, in any case of a sealed instrument. Bottomry bonds, and other instruments of hypothecation, constitute exceptions. 2 Chitty's Gen. Practice, 533.

\* 15. Where the Admiralty has cognizance of the principal cause, it shall have jurisdiction over the incidents. 2 Sand. 260., 1 Vent. 173, 174. 308., 2 Lev. 25., Cro. El. 685.

not by the Admiral nor his lieutenant in any wise.\*

23. By 3 & 4 *Vict. c. 65. s. 6.* it is enacted that the High Court of Admiralty shall have jurisdiction to decide all claims of salvage, damage, or towage, relating to any ship or sea-going vessel, or for necessities supplied to any foreign ship or sea-going vessel, and to enforce payment thereof, whether such ship or vessel may have been within the body of a county or on the high seas, at the time when the cause of action accrued.†

24. By 9 & 10 *Vict. c. 99. s. 40.* the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever, in the nature of salvage, to ships or goods, or to articles found at sea or on shore, whether such services shall have been performed at sea or within the body of any county.

25. Admiralty causes must be causes arising wholly upon the sea, and not within

the precincts of any county, either by land or by water; nor of any wreck of the sea, for that must be cast upon land before it becomes wreck; but over things flotsam, jetsam, and ligan, the Admiralty hath jurisdiction, as being in and upon the sea. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 282.

26. The Court of Admiralty hath no jurisdiction of any contract within any county on land or water, so that it is not material whether the place be upon the water *inter fluxum et refluxum aquae*, but whether it be upon any water within any county. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 283.; but see 3 Inst. 113.‡

### 3. With reference to the execution of sentences of courts of admiralty abroad.§

See *antè*, Nos. 1, 2, 3;  
COURTS, *cap. II.*; EVIDENCE,  
*cap. II. sect. 6.*

\* 16. This statute is recognised and enforced by 9 *Hen. 4. c. 11.*, which gives damages against parties proceeding in the Admiralty.

17. With reference to the ancient construction of the statutes 13 *Rich. 2. c. 5.* and 15 *Rich. 2. c. 3.*, see *Godolphin's Admiral Jurisdiction*, *cap. XII. p. 141. et seq.*

18. It was said that the words in the statute 15 *Rich. 2. c. 3. (infra primos pontes)*, ought to be construed between the first points, viz. the Land's End; for where a man can see from the one side of the water to the other, it is *infra corpus comitatús*. *On. 122, 123., semb. 4., Inst. 135–140, 141., Mo. 892.*

† 19. In the following cases, occurring prior to the 3 & 4 *Vict. c. 65.*, it was held that the Court of Admiralty had not jurisdiction, by reason that the cause of action in each case had arisen within the body of a county: *The Eleanor, Robertson*, 6 C. Rob. 39.; *The Public Opinion, Ackland*, 2 Hagg. 398.; *The Eliza Jane, Findlay*, 3 Hagg. 335.

‡ 20. Prohibition lies to the Court of Admiralty if the libel there be upon a contract, plea, or complaint made by water, or by land, within any county of the kingdom. 4 *Inst. 134, 135.*, 1 *Rol. 531. l. 32.* 32 *L. 35.*, 2 *Brownl. 37.*, 1 *Lev. 106, 107.*, *Ow. 123.*, 1 *Com. Dig. 276.*; and see *Ross v. Walker*, 2 *Wils. 264.*

21. The Court of Admiralty cannot hold plea of any matter done upon the Thames, because it is *infra corpus comitatús*. 4 *Inst. 139.*, 1 *Rol. 531. l. 35.*, *Mo. 916.*, 6 *Viner's Abr. 524.*; and see *The Eleanor, Robertson*, 6 C. Rob. 39.

22. Prohibition lies to the Court of Admiralty in any suit there arising within any port or haven; for though it be within the flux and reflux of the sea, and below the first bridges, yet the port or haven is within the body of a county. 4 *Inst. 138. 141.*, 2 *Cro. 574.*, *Mo. 892.*, 2 *Rol. 49.*, 1 *Com. Dig. 276.* Or if the suit arise in any coast, shore, or harbour. *Mo. 892.*

23. The Court of Admiralty has jurisdiction in the case of a ship taken upon the sea being stranded

or damaged in the haven. 1 *Sid. 367.*, 1 *Lev. 243.*, 1 *Com. Dig. 277, 278.*

24. All havens are within the body of a county, and therefore not within the jurisdiction of the Admiralty, *Godb. 261.*; but all the land upon which the sea flows and reflows is within the jurisdiction of the Admiralty. *Mo. 122. in pl. 265. (25 Eliz.)* All rivers are within counties. 4 *Inst. 137.* All the ports within England are *infra corpus comitatús*. 23 *H. 6.* and 30 *H. 6.*, *Holland's case. Godb. 261.*, 6 *Viner's Abr. 521.*

25. Prohibition lies to the Admiralty in any suit there on an indenture, bond, or specialty, or other matter made or done upon land *in partibus transmarinis*. *Hob. 11. 79.*, 4 *Inst. 134. 139.*, 1 *Rol. 528. l. 50.*, 529. *l. 22.*, 531. *l. 25.* 30. 45., *Cro. Car. 603.* (but see *contrà, Cro. Car. 296.* and 3 *Lev. 232.*), 2 *Brownl. 10. 16. 37.*, 12 *Co. 104.*, *Dub. 2 Rol. 493. 497.*, *Sir L. Jen. vol. 1. 79.*

26. The coast is properly not the sea, but the land which bounds the sea: it is the limit of the land jurisdiction. This limit, however, varies according to the state of the tide. When the tide is in and covers the land it is sea; when the tide is out it is land as far as low-water mark. Between high and low water mark it must, therefore, be considered as *divisum imperium*, unless the water be within a county. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 275–283.

§ 27. If there be a suit in the Admiralty to execute a sentence in a foreign court (not final) a prohibition goes. 1 *Sid. 418.*, 1 *Lev. 267.*, 1 *Vent. 32.*

28. A sentence of the Admiralty *in partibus transmarinis* may be executed by the Admiralty here, upon the receipt of letters missive for that purpose. 1 *Rol. 530. l. 5.*, 1 *Vent. 32.*, 1 *Sid. 320.*, 1 *Lev. 267.* Though the sentence of the Admiralty *in partibus transmarinis* executed here was for a matter upon land, yet a prohibition does not go to the Admiralty here, which executes such sentence, if nothing further is done. *Semb. 1 Lev. 267.* For the Court will give credit to the sentence there. *Ray. 473.*, *vide Skin. 59.* *Semb.*, therefore, that

#### 4. To enforce its process.\*

##### (a) Generally.

27. The Court of Admiralty may punish such as resist the process of that Court, and may fine and imprison for a contempt to it acted in the face of it, though it is no court of record. *Sparks v. Martin*, (20 Car. 2.), 1 Vent. 1., 6 Viner's Abr. 522.

28. Where a ship was seized by Admiralty process and decreed to be sold to satisfy the plaintiff's demand, and no appeal was made from that sentence, but between the seizure and the decree a writ of execution issued against the owner at the suit of another creditor: *Held*, that the sheriff could not take the vessel under this writ, nor maintain trover against the officer in possession by the warrant of the Court of Admiralty. *Ladbroke v. Crickett*, 2 T. R. 649.; and see *Buggin v. Bennett*, 4 Burr. 2035.; S. P. *Blacquiére v. Hawkins*, 1 Dougl. 378.

29. A rule nisi for the Marshal of the Admiralty or his deputy to pay over to the Sheriff certain proceeds of sale of a ship sold under a decree of the High Court of Admiralty, whilst in possession of the Sheriff under a *fi. fa.* for satisfaction of a judgment debt, discharged. *The Flora*, *Findlay*, 1 Hagg. 300.

30. By 3 & 4 Vict. c. 65. s. 20., gaolers are to receive and take into custody all prisoners committed by the Court of Admiralty, or by any coroner appointed by any Judge of that Court, and are liable to the usual penalties and consequences for escapes.

##### (b) In cases of rescue.

31. If a ship be arrested by process out of the Court of Admiralty, for a matter

arising within their jurisdiction, though she be rescued at land, the consuance of the rescue belongs to the Admiralty, otherwise not. *Rigden v. Hedges* (1697), 1 Ld. Raym. 446., 1 Vent. 1., Sti. 171., 6 Viner's Abr. 536.

32. And the Court of Admiralty may re-seize her on land and out of their jurisdiction, and no prohibition lies. *Ibid.*, and 12 Mod. 246.

See *antè*, notes 7, 8, 9.;  
ATTACHMENT, *cap. II.* and  
V.; CONTEMPT.

#### 5. To direct issues and new trials.

33. By 3 & 4 Vict. c. 65. s. 11. power is given to the Judge of the Court of Admiralty to direct issues on any questions of fact to be tried in the superior Courts of Common Law at Nisi Prius.

34. By the 12th section the costs of such issues are directed to be taxed and enforced like costs in the Court of Admiralty.

35. By the 13th section, powers are given to the Judge of the Court of Admiralty to direct new trials on any such issues, and to award the costs of such new trials, or of the applications for the same, as he shall think fit.

36. By the 14th section, the granting or refusing such new trials may be matter of appeal to the Queen in Council.

37. By the 15th section, the usual rights, powers, and remedies with respect to bills of exceptions to the trials of such issues are to be allowed to either party, and such bill of exceptions, under seal of the Judge to whom the same shall have been made, shall be annexed to the record of the trial of such issue.

38. By the 16th section, the record of

if a foreign Admiralty adjudge a ship to be a prize, and after a sale here upon land, there be a suit for an account, a prohibition shall not go; for it is only an execution of the sentence which adjudged it to be a prize. 1 Sulk. 32.

29. On the ancient practice of letters of request, and on the execution in this country of a sentence of a civil law court in a foreign realm, see *Sir L. Jen.*, vol. ii. pp. 762. 788., also Lord Holt's observations in *Green v. Walker*, 2 Ld. Raym. 893., and *Exer v. Jones*, *ibid.* 935.

\* 30. Execution in the Admiralty may be against the person of the defendant, *Godb.* 261.; and he may be taken upon it in any county in England. *Skin.* 93.

31. But execution out of the Admiralty shall not be against the lands of the defendant. *Godb.* 261.

32. If a person taken in execution upon a sentence of the Admiralty bring an *habeas corpus*, he shall not be discharged, if the cause do not appear

out of their jurisdiction, though irregular, for he ought to have made an appeal. *Sti.* 129.

33. Where a vessel was under arrest in the Court of Admiralty in a cause of Bottomry, and a distress was levied by magistrates at the suit of the seamen for wages, under 7 & 8 Vict. c. 112. s. 15., by authority of which, notwithstanding notice from the officer in possession, the tackle, apparel, and furniture were sold, the Court granted a monition against the auctioneer, to show cause why an attachment should not issue against him for removing the same, who thereupon restored them. *The Westmoreland*, 4 Notes of Cases, 173.

34. It is the duty of all parties who are in possession of a ship under the authority of the Court of Admiralty to give the earliest intimation to the Court of any attempt at an infringement of its authority. The Court will always hear a motion where its authority is attempted to be evaded. *Ibid.*

such issue is to be transmitted to the Registrar of the Court of Admiralty, and (unless set aside) is to be conclusive of the fact as to which such issue was directed.

39. Issue directed under 3 & 4 *Vict. c. 65.*, to try the existence of a custom set up in bar to a suit for salvage rendered by one whaling vessel to another while engaged in the South Sea fishery. The custom having been found for, motion for new trial refused, but without costs. *The Harriot, Soutrice*, 1 W. Rob. 429.

#### 6. With reference to Vice-Admiralty Courts.\*

40. Where a Vice-Admiralty Court has been abolished, the High Court of Admiralty has, in a variety of instances, to prevent a failure of justice, felt itself authorized, upon its general jurisdiction, which extends universally over the King's dominions, to adjudicate upon transactions pending before, but not determined by, such Vice-Admiralty Court. *The Prima Vera, Vodnick*, Edwards, 24.

41. The High Court of Admiralty has general jurisdiction sufficient to aid the process of the Vice-Admiralty Courts in order to prevent a total failure of justice; and therefore where a Vice-Admiralty Court had been abolished before its sentence could be carried into effect, the court sustained an application to carry it into effect. *The Picimento, Garcai*, 4 C. Rob. 360.

42. The High Court of Admiralty will look with tenderness on the informalities in the practice of the Vice-Admiralty Courts. *Le Louis, Forest*, 2 Dodson, 239.

43. By 2 W. 4. c. 51. s. 5., in all cases of proceedings in any Court of Vice-Admiralty abroad, any person aggrieved by the charges of the officers or practitioners thereof, and the allowance thereof by such court as not warranted by the tables of fees therein mentioned, may on a summary application by himself or agent to the High Court of Admiralty have such charges taxed by the authority thereof.

*In prize matters*—see PRIZE.

#### 7. Miscellaneous.†

44. The proceedings in the Court of Admiralty are according to the course of the civil law, and therefore the Court is not a court of record, and by consequence cannot assess any fine in such case, as judges of a court of record may do. *Tomlinson v. Phillips*, (2 Jac.) 12 Rep. 104., 6 Viner's Abr. 521. Yet by custom of the Court, they may amerce the defendant for his default at their discretion. *The case of the Admiralty* (7 Jac.), 13 Rep. 53., 6 Viner's Abr. 522.

45. Fees cannot be sued for in the Admiralty. *Clerk v. Lee* (1714), 10 Mod. 264.

46. The Court of Admiralty cannot enter into the contracts of general creditors, yet it may be bound to take a judgment on record as a debt. *The Flora, Findlay*, 1 Hagg. 303.

47. The King's Bench will not prohibit the Court of Admiralty from proceeding on an Order of Council to arrest a ship. *Sands v. Eston* (1682), 2 Show. 303.; S. C. T. Raym. 488.; S. C. Skin. 91.

48. The Court of Admiralty will not lend its assistance to carry into effect a contract in direct violation of the Law of Nations. *The Carolina, Nordquist*, 4 C. Rob. 462.

49. The High Court of Admiralty originally possessed the sole and exclusive criminal jurisdiction over naval officers, but this jurisdiction has been some time transferred by the institution of naval courts-martial, and it will now therefore be very cautious in determining a question of civil interest, on grounds imputing a criminal misconduct to officers in high situations of naval command, more especially where such asserted misconduct has been investigated and disproved before the proper tribunal. *The Ville de Varsovie*, 2 Dodson, 317.

#### VII. VICE-ADMIRALTY COURTS.

##### 1. Of the jurisdiction of—

##### (a) Generally.‡

50. By 2 W. 4. c. 51. s. 6., jurisdiction is given to the Courts of Vice-Admiralty

\* 35. The appellate jurisdiction of the High Court of Admiralty from Courts of Vice-Admiralty is, by the 3 & 4 W. 4. c. 41., transferred to the Judicial Committee of the Privy Council.

† 36. By 27 Hen. 8. c. 4., and 26 Hen. 8. c. 15., and 39 Geo. 3. c. 37., trials of offences on the high seas, or within the jurisdiction of the Lord High Admiral, are transferred from the jurisdiction of the Court of Admiralty to certain Commissioners to be from time to time appointed for such purposes under the great seal. By 4 & 5 W. 4. c. 36. (the Central Criminal Court Act) such jurisdiction is further transferred to the justices of oyer and terminer and gaol delivery, to be appointed by commissions issued under that act.

‡ 37. The patent of the judge of the Vice-Admiralty Court of the Cape of Good Hope authorizes him to take cognizance of charter-parties. *The Elizabeth*, 1 Hagg. 226.

38. By the 2 W. 4. c. 53., consolidating the laws

## AFFIDAVITS.

abroad in all suits for seamen's wages, pilotage, bottomry, damage, salvage, droits of admiralty, and contempt of His Majesty's regulations and instructions relating to His Majesty's service at sea, where the ship or the master thereof shall come within the limits of any such Court, notwithstanding the cause of action may have arisen out of the local limits thereof; and the proceedings are to be carried on in the same manner as if the cause of action had arisen within such limits.

2. *Of the proceedings in —*

(a) *Generally.\**

(b) *On appeal.†*

3. *Miscellanea.*

51. Neither the Governor of a British Colony, the Vice-Admiral on the station,

nor the Lords Commissioners of the Admiralty, have of themselves any authority to appoint a Vice-Admiralty Court at such colony. *The John, Buchanan*, 1 Dodson, 380.

52. A Vice-Admiralty Court abroad is not a court of record. *Smith v. Nicholls*, 7 Scott, 147., 5 Bing. N. C. 208., 7 Dowl. P. C. 282., 1 Arn. 474.

53. A plea of a judgment recovered in the vice-admiralty court at Sierra Leone is no bar to an action brought for the same cause in this country. *Ibid.*

54. *Semble*, that a decree of a Vice-Admiralty Court, called an "interlocutory," is in effect final; and that such a decree, requiring a party to pay a certain sum, may be enforced in the Courts at Westminster. *Obicini v. Bligh*, 1 M. & Scott, 477., 8 Bing. 335.

## AFFIDAVITS.

I. OF THE PREPARATION OF —

II. WHERE RECEIVED.

III. WHERE REJECTED.

IV. MISCELLANEA.

V. OF THE ALLOWANCE OF COSTS OF IRRELEVANT AFFIDAVITS — see COSTS.

VI. TO LEAD SECURITY FOR COSTS — see SECURITY FOR COSTS.

I. OF THE PREPARATION OF — ‡

1. It is contrary to the duty of persons preparing affidavits in salvage cases, &c.

to make out the statements to which the witnesses are to swear, in language contrary to the natural tone in which the parties would, unassisted, express themselves.

relating to the payment of army prize money, and incurred abroad, the penalties and forfeitures by that act imposed are to be recovered by action, &c. in any of His Majesty's Courts of Record in the colony, &c., or in any of His Majesty's Vice-Admiralty Courts having jurisdiction there.

\* 39. The practice to be observed in suits and proceedings in the Courts of Vice-Admiralty abroad is governed by certain rules and regulations established by an Order in Council under the 2 & 3 W. 4. c. 51., and printed and circulated by the Board of Admiralty. The rules and regulations are accompanied by tables of fees for the Courts of Vice-Admiralty in the various Colonies, and contain a copious appendix of forms of pleadings, &c.

† 40. All appeals from decrees of the Vice-Admiralty Courts are to be asserted by a party in the suit within fifteen days after the date of the decree, which is to be done by the proctor declaring the same in court, and a minute thereof is to be entered in the assignation book; and the party must also give bail within fifteen days from the assertion of the appeal, in the sum of 100*l.* sterling, to answer the costs of such appeal.

In all cases, however, in which an appeal is asserted, except respecting slaves, the Judge may proceed to carry his sentence into execution, provided

the party in whose favour the decree has been made give bail to abide the event of the appeal by two sureties in the amount of the value of the property or subject in dispute, together with the further sum of 100*l.* sterling, to answer costs, in the event of the same being awarded by the superior court.

The party appealing, having complied with these regulations, is then to cause the Judge and Registrar to be served with an inhibition from the High Court of Admiralty, restraining them from further proceeding in the cause, and also with a monition to transmit the process. This process will consist of a fair copy of the proceedings under seal of the Vice-Admiralty Court, to be made and signed by the Registrar at the expense of the party ordering the same, which is to be transmitted to the superior court, pursuant to the monition.

The proceeds, if in court or in the hands of any individual, must, on a special monition for that purpose being served, be remitted to the Registrar of the High Court of Admiralty or court of appeal. — *Extract from the Rules and Regulations with reference to Proceedings in Vice-Admiralty Courts established by Order in Council under 2 & 3 W. 4. c. 51.*

‡ 1. The affidavit to lead an application for further time to bring in proofs, in order to obtain the



They should consist of a plain statement of the facts and circumstances as the witnesses themselves state them, and as they would state them if examined in Court. The Court wishes always to have the statements of such witnesses in their own language. *The Towan*, 8 Jur. 222.

2. Affidavits sworn before masters extraordinary in chancery must contain, in the jurat, the name of the place where they were sworn. Objection to affidavits irregularly sworn in this respect sustained. *The Reward, Hogg*, 1 W. Rob. 174.

## II. WHERE RECEIVED.

3. The declarations and affidavit of a deceased person, relating to matters in which he himself was concerned, admitted to proof. *Robins v. Sir W. Wolseley*, 2 Lee, 34. 443.

4. On an appeal from an award of magistrates in a salvage case, affidavits disclosing facts not put in evidence before the magistrates refused to be received. *The Onris, Shaken*, 2 Hagg. 135.

5. On motion to expunge from affidavits matter which had not been embodied in the act on petition, on the ground that the opinion of Trinity Masters might be unduly biassed by such matter, the Court intimated it should reject the motion as to merely irrelevant matter which should be objected to at the hearing, and not before; but should grant it as to irrelevant matter of so extraordinary a character that the Trinity Masters might have such an undue impression made on their minds, as it would be out of the power of the Court to efface at the hearing. *The Speed*, 7 Jur. 1068., 2 W. Rob. 230.

6. Motion, after publication, to permit further affidavits to be given in, and to allow further time to procure them, the parties being at sea, on the ground that it had been intended originally to apply for time to procure these affidavits, but that

the case had been closed through inadvertence of the proctor, granted, the Court intimating, however, that it would view the affidavits introduced at such a stage of the cause with great suspicion; and that, without reference to the result of the suit, the party would be liable to the costs of the application, should the affidavits prove unnecessary. *The Speed*, 7 Jur. 1069.

## III. WHERE REJECTED.\*

7. Affidavits impeaching the accuracy of depositions in preparatory rejected as inadmissible. *The Minerva*, Hay & Marriott, 235.; *The Jungfre Maria*, *Ibid.* 273.

8. In a case of blockade, an affidavit of the foreign master, denying an admission in his deposition, and impeaching the accuracy thereof, refused to be received. *The Apollo, Karsdadt*, 5 C. Rob. 286.

9. An affidavit explanatory of the depositions, and supplying the deficiencies therein, the examinations having been imperfectly taken, admitted; but afterwards held to be inadmissible, as containing merely a repetition of the depositions or a contradiction thereof. *The Georgiana, Pitts*, 1 Dodson, 399.

10. The Court will not receive, on the mere affidavit of the defendant, facts which might be a bar to the action. Such an affidavit rejected. *The Lord Hobart, Gamage*, 2 Dodson, 101.

11. In a cause of damage affidavits relative to what transpired at the trial in an action at law between the same parties in respect of damage arising out of the same collision rejected; the Court intimating that it could receive no evidence of such a nature as to the occurrences at the trial, and that the only authority to which it could resort, if requiring any such information, would be the notes of the judge who tried the action. *The Ann & Mary*, 7 Jur. 1001., 2 W. Rob. 196.

See *antè*, No. 5.

evidence of a particular witness, should state that the witness is a necessary witness, and that his evidence could not have been earlier obtained. — *The Gazelle*, Nov. 1846.

\* 2. In a case of Damage an affidavit was made by A., and when the affidavits had been exchanged an application was made to the Court to admit an affidavit, impeaching the credibility of A. The Court observed that its reception of this exceptive affidavit would create a difficulty in the future practice of the Court; since, in similar suits, affidavits would then be introduced in impeachment of

parties who had made affidavits in the principal cause, and counter affidavits would also be brought in, compelling the Court to try questions of fact occupying as much time, and leading to as much expense, as the real issue in the cause. It therefore postponed the question of the admissibility of the affidavit until the hearing of the cause, in order to ascertain whether the merits of the case would be so essentially affected by the evidence of A. as to require of the Court to determine whether or not it could receive such an affidavit. *H. M. S. S. Volcano*, 3 Notes of Cases, 210.

## IV. MISCELLANEA.

12. Affidavits to lead *Primum Decretum* should be sworn by commission or before a surrogate. An affidavit for such purpose sworn in Scotland before a commissioner for taking bail in prize causes is irregular. Affidavit so sworn refused. *The Sylvan, Bell*, 2 Hagg. 155.

13. The Court of Admiralty has no power to compel a person to make an affidavit. *The Minerva, Crawford*, 1 W. Rob. 171.

14. Affidavits as to the perishable condition of a cargo ought to be made by persons competent to form an opinion of the peculiar nature of the cargo. *Anon.* 7 Jur. 182.

## AGENTS.\*

## I. HOW FAR REPRESENTING THEIR PRINCIPALS.

## II. PRINCIPALS HOW FAR BOUND BY ACTS OF—

## III. PRINCIPALS HOW FAR LIABLE FOR ACTS OF—

## IV. MISCELLANEA.

## V. DECLARATIONS OF—HOW AFFECTING THEIR PRINCIPALS—see EVIDENCE.

## VI. OF ACCOUNTS AND ADVANCES OF—see SALVAGE (civil).

## VII. OF THE RIGHT OF—TO ACT AS SALVORS—see SALVAGE (civil).

## VIII. FOR NAVAL PRIZE, SLAVE SEIZURES, BOUNTIES, &amp;c.—see PRIZE AGENTS.

## I. HOW FAR REPRESENTING THEIR PRINCIPALS.†

1. The act of the agent is the act of the principal. *The Wasser Hundt, Lorentzen*, 1 Dodson, 272. n.

## II. PRINCIPALS HOW FAR BOUND BY ACTS OF—

2. Where persons put their property into the hands of their agent, they must be bound in the prize Court by the consequences of his acts as to the property so entrusted, whether they are immediately cognizant of his practices or not. *The Calypso, Speck*, 2 C. Rob. 154.

3. A principal is bound by all the acts of his general agent; but, where he appoints an agent for a particular purpose, he is only bound to the extent of the au-

thority given. *E. I. Company v. Hensley*, 1 Esp. 112., (Kenyon); and see *Attwood v. Munnings*, 7 B. & C. 278., 1 M. & R. 66.

*In cases of blockade*—see BLOCKADE, cap. XV. sect. 3.

See EVIDENCE, MASTER, NATIONAL CHARACTER.

## III. PRINCIPALS HOW FAR LIABLE FOR ACTS OF—

4. It has been held that a steward, manager, or agent, was not liable for damage done by the negligence of those employed by him in the service of his principal; for the principal, or those actually employed, only are liable. *Stone v. Cartwright*, 6 T. R. 411.‡

See DAMAGE. OWNERS.

\* 1. The law of principal and agent is elaborately discussed in *Smith's Mercantile Law*, book i. cap. 5. p. 87. *et seq.*; and see also thereon 2 *Stephens' Black. Comm.* 117., and the Scotch cases on this head in *Shaw's Digest of the Scotch Reports*, vol. i. p. 44.

† 2. Payment, or tender of payment, to an agent in the course of his employment, is payment, or tender of payment, to the principal; but the payment or tender must be in the course of his employment. *Smith's Mercantile Law*, 124.; and see the cases there cited.

‡ 3. The principal is responsible for the negligence of his agent acting in the prosecution of his business, though not under his immediate direction; and this principle seems to extend to a sub-agent. The principal is not, however, responsible for the wilful and malicious trespass of his agent; but he has been thought responsible for his deliberate fraud, committed in the execution of his employment, though without the principal's authority. *Smith's Mercantile Law*, 127. *et seq.*

## IV. MISCELLANEA.\*

5. A master at a foreign port appointed parties to act as agents of the ship, her owners having no agents there. His instructions (not in writing) from his owners were to bring the ship from thence homeward. Such agents held not authorized to assist the master, except for such purpose, without his producing an authority from the owners authorizing his employing the ship in other adventures, or investing him with a discretion therein, and that if they so assisted him for other adventures without such authority, they did so on his own credit and responsibility only, and thereby became his agents, and not agents of the owners. *The Reliance, Hays*, 3 Hagg. 69.

6. A company having assumed voluntarily, and without any particular appointment, the character and benefit of agent for the Crown, held to have assumed likewise all the responsibility and liabilities of an agent. *Capture of Chinsurah*, 1 Acton, 179.

7. An agent is not bound by the law merchant to advance money for the use of his principal on the expectation of receiving it back at some uncertain period. *The Warrior, Peache*, 2 Dodson, 294.

8. A foreign agent, upon whom the entire management of a ship devolves, and who acts *bond fide*, is entitled to be equitably supported, and his acts liberally construed according to the necessities of the case. *The Tartar, Tharp*, 1 Hagg. 1.

9. Reference ordered to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming also in that capacity as salvor. *The Happy Return, Woolcock*, 2 Hagg. 207.

10. A Greenock ship having been repaired at Hull by order of the agents of the owner, at the instance and under the direction of the master, the account for such repairs was made out to "Captain Coward (the master) and owners of ship Jeanie," attested by Coward, and addressed to the agents for payment, which was not, however, demanded for some months. In the mean time the owner paid the agents for the repairs. The agents became embarrassed in their circumstances, upon which the shipwright applied for payment to the owner: *Held*, that the owner was still liable, for he could be discharged only by the positive agreement, or by necessary inference that the shipwright had abandoned that security. *Stewart v. Hall*, 2 Dowl. 29., 1 Bell, 525. n. 5.

## ALIENS.†

## I. GENERAL PRINCIPLES WITH REFERENCE TO—

## II. STATUTORY REGULATIONS WITH REGARD TO—

## III. ALIEN ENEMIES.

1. *Who are to be considered as—et contra—see NATIONAL CHARACTER.*

2. *Of the proof of—*

3. *Of the disabilities attaching to—*

(a) *How affected by the return of peace.*

(b) *Exemptions from—*

4. *Of the forfeiture of the property of—*

(a) *Exemptions.*

See FOREIGNERS.

## I. GENERAL PRINCIPLES WITH REFERENCE TO—

1. The introduction of the English law into a conquered or ceded country does not draw with it that branch which relates to aliens, if the acts of the power introducing it show that it was introduced not in all its branches but only *sub modo*, and with the exception of this portion. *The*

*Mayor of Lyons v. The E. I. Company*, 1 Moore, 175.

2. The *status* of a party resident in the Mauritius must be determined by the law of England, but the rights and liabilities incident to such *status* must be determined by the law of the colony. By the 13th article of the Code Civile (which prevailed in the Mauritius previous to its surrender to the British Crown) the do-

\* 4. An agent is always incompetent, without special authority for that purpose, to appoint another person to act in his stead, the maxim of law

being *delegatus non potest delegare*. 2 *Stephens' Black. Comm.* 120.

† 1. See on this head 2 *Stephens' Black. Comm.* 429.

micile of an alien can only be obtained "*par l'autorisation du gouvernement*," which, according to the law and practice in France is an express and formal authority of the government, and not merely a tacit or permissive acquiescence for the residence of an alien friend in the island. Where, therefore, an alien friend had by an order of the governor and colonial council been deported and directed to quit the island within a month, it was *Held* by the judicial committee, to whom the case had been referred by the Crown, that such order was consistent with the law of France, and strictly legal, notwithstanding that it appeared that the party so deported had enjoyed the privileges and exercised the rights of a person duly domiciled in the island. *In re Adam*, 1 Moore, 460.

3. The prerogative of the Crown with regard to aliens must be determined by the laws of the particular colonies in which questions thereon arise, and not by the laws of England, which are only to be looked at in order to determine who are and who are not aliens. *Donegain v. Donegain*, 3 Knapp, 63.

4. It is a general rule that save as to real estate, an alien friend is entitled to sue on the same footing as a British subject. *The Johann Friederich*, 1 W. Rob. 37.

## II. STATUTORY REGULATIONS WITH REGARD TO —

5. By 7 & 8 Vict. c. 66. s. 6. aliens taking up their residence in the United Kingdom may become naturalized on obtaining the certificate, and taking the oath therein mentioned, and may thereupon enjoy all the privileges of natural born subjects, save being capable of being members of the Privy Council or of either house of parliament; and also save such other rights

or privileges as they may be restricted from in such certificate.

6. By sect. 13. persons naturalized before the passing of this act and resident five successive years in this country are entitled to such rights and privileges of British subjects as are conferred on aliens by this act.

7. By sect. 16. women married to natural born subjects are to be deemed naturalized, and to have all the rights and privileges of natural born subjects.\*

## III. ALIEN ENEMIES.

1. *Who are to be considered as — et contra* — see NATIONAL CHARACTER.

### 2. *Of the proof of —*

8. To prove that a person was an alien enemy at the time of the action brought, it is not enough to show that he was some time before domiciled in a territory which had become hostile, without showing that he was a native of that territory. *Harman v. Kingston*, 3 Camp. 152.

### 3. *Of the disabilities attaching to —*

9. Formerly an alien enemy might have maintained an action in this country for the recovery of a right claimed to be acquired in actual war. *Ricord v. Bettenham* (1764), 13 Burr. 1734.; S. C. 1 Bl. Rep. 563.; S. P. *Corner v. Blackburn* (1781), 2 Doug. 640.

10. But this doctrine has since been overruled. *Anthorn v. Fisher* (1781), Ex. Chamb., 2 Dougl. 650. n.

11. And it is now clearly settled, that an action does not lie at the suit of an alien enemy. *Brandon v. Nesbitt*, 6 T. R. 23.; S. P. *Bristow v. Towers* (1794), 6 T. R. 35.; *Potts v. Bell* (1800), 8 T. R. 548. †

\* 2. See also the following statutes: 21 Hen. 8. c. 16., 32 Hen. 8. c. 13., 25 Eliz. st. 2., 11 & 12 W. 3. c. 6., 25 Geo. 2. c. 39., 6 Geo. 4. c. 16., 6 & 7 W. 4. c. 11.

† 3. The general rule of the common law of England is, that an alien enemy cannot maintain, in his own name, an action in the courts of that country during war; and this rule is inflexible, except where the alien enemy is under the protection of the King, as where he comes into the kingdom after the war by licence, or, being there at the time of the war, is permitted to continue his domicile. *Crawford et al. v. William Penn*, Peters's (AMERICAN) Circ. C. Rep. 106.

4. So, also, a person beneficially interested in a suit, if an alien enemy, cannot support a suit in the name of his trustee, who is not an alien; but it is other-

wise if the contract upon which suit is brought arises out of a trade licensed by the government in whose courts redress is sought; and the taint of enemy interest will not defeat such a suit. *Ibid.*

5. But the rules of the common law in all their rigour do not apply to courts acting under the general law of nations, and proceeding according to the civil law. In these courts the only question is, has the plaintiff a *persona standi in judicio*? — and this depends on the legality of the contract; the right to sue and to compel payment being a necessary incident to the right to contract. *Ibid.*

6. Where the pursuer of an action was an alien enemy, the court sisted procedure. *Carron v. Cowan and Co.* (1809); *Wright v. Hutchinson* (1810), 15 F. C. 435. foot-note (SCOTCH REP.)

12. A French ship seized before the declaration of reprisals by this country condemned, on the ground that the French had since declared hostilities against this country, and that the enemy claimant had, therefore, no civil right to plead. *The Pere Adam*, Hay & Marriott, 141.

13. An alien enemy cannot sustain a claim or enforce any interests in the Courts of Great Britain. This has been at all times so fixed a principle in the Admiralty Courts, that even in cases of ransom, which were formerly in England legal contracts and contracts arising out of the events of war, the ransom could not be put in suit on the part of the enemy. Proceedings were always carried on in the name of the hostage suing for his liberty. *The Rebecca*, Maddick, 5 C. Rob. 102.

14. A party who by the intervention of hostilities has become an alien enemy cannot prosecute an appeal. The Court can pay no attention to his claims in any way. *The Charlotte, Avery*, 1 Dodson, 214.

15. An enemy whose property has been captured within the jurisdiction of a neutral territory cannot make claim thereto, but must resort to the neutral for his remedy. *The Eliza Ann and Others*, 1 Dodson, 245.

16. If a debt be due to two parties, and one of them is an alien enemy, the other cannot enforce its payment. *Roberts v. Hardy*, 3 M. & S. 533.

17. To an action brought by an agent on behalf of an alien enemy, it cannot be replied that the object of the suit was, that the agent might with the proceeds pay himself a debt due to him from the alien. *Brandon v. Nesbitt* (1794), 6 T. R. 23.\*

18. If a plaintiff become an alien enemy after action brought, his disability ought to be pleaded in bar of the further maintenance of the suit, and not of the action generally. But although the latter form is inaccurate, the Court is bound *ex officio* to give judgment against the plaintiff, if it appear upon the whole record that the plaintiff has no right to sue. *Le Brit v. Papillon* (1804), 4 East, 502.

19. The Crown may advance a claim for restitution of a captured vessel belonging to a party, who, by the intervention of hos-

tilities, has since become an alien enemy, and may prosecute an appeal from a condemnation thereof, as being entitled to the property of such alien enemy. *The Charlotte, Avery*, 1 Dodson, 214.

20. A contract with an alien enemy is void. *Ex parte Bousmaker*, 13 Ves. 71.

21. The Court will not suspend proceedings on appeal for any length of time at the petition of the appellant; and, *à fortiori*, where such appellant is an alien friend, or one who by the intervention of hostilities has become an alien enemy, application of an appellant, an alien enemy, to suspend proceedings in an appeal until the return of peace, refused. *The Charlotte, Avery*, 1 Dodson, 215.

22. In a case of prize of a neutral ship, in which the Court had decreed restitution (being one of great misconduct in the captor, a privateer), and had referred it to the registrar and merchants to report upon a charge of embezzlement, on the report being afterwards brought up, stating the amount of embezzlement, the neutral claimant had become an enemy. Application was therefore made to the Court by a British merchant; who had acted as agent of the neutrals in claiming the property, to confirm the report, and direct the sum reported and the costs to be brought into the registry and paid out to him as an indemnification for his expenses. The Court directed the money to be brought into the registry to be at the disposal of His Majesty, intimating that the neutral claimant might apply for a licence to enable him to take it out, as a reparation for the injury he had received. *La Purissima Conception*, 5 C. Rob. 357. n.

23. A consul of a neutral state resident in the enemy's country is subject to all the disabilities of an enemy merchant, as to the power of becoming a claimant in the Court of Admiralty; but he is not on that account necessarily disabled from introducing evidence before the Court, for the alien enemy is not generally disabled as a witness, and the cases of exception are few. *The Falcon*, *Atkins*, 6 C. Rob. 197.

See *post*, notes 10, 11.

\* 7. Two sets of bills were, before a declaration of war, drawn by a foreigner on a British subject; and after the declaration, but before it was known to the drawee, he accepted the first set; and thereafter the second set was endorsed by an alien enemy to a British subject, who was in the knowledge of

the declaration of war; and also acquired right to the accepted set in that knowledge: *Held*, that he had no right to recover payment from the British acceptor, as he must be held to stand in the place of the alien enemy. *Johnston and Wright v. Goldsmith* (1809), F. C. 191 (Scotch Rep.)

(a) *How affected by the return of peace.*

24. A contract with an alien enemy made in time of war cannot be enforced in the courts here, even although the plaintiff do not sue until the return of peace. *Willison v. Pattison* (1817), 7 Taunt. 439., 1 Moore, 133.

25. Even a British-born subject resident in a hostile country cannot, upon the return of peace, recover in a British court upon contracts entered into by him in that country in time of war. *Ibid.*

26. The right of a foreigner on a contract is generally only suspended by a subsequent war, and may be enforced upon the restoration of peace. In bankruptcy, therefore, a claim admitted, reserving the dividend. *Ex parte Bousmaker*, 13 Ves. jun. 71.

27. If an alien enemy, a prisoner of war, make a contract, it may be enforced by the King for the benefit of the Crown; and if the Crown does not enforce it, the prisoner may sue on it after the return of peace. *Maria v. Hall*, 1 Taunt. 33. n.

28. An alien friend having become entitled to costs and damages under a decree of the Court of Admiralty for an illegal seizure of his vessel, but having afterwards, by the intervention of hostilities, become an alien enemy: *Held*, the proceedings having been suspended until the return of peace, to be then entitled to revive such proceedings and prosecute such claim. *The Nostra Senora de los Dolores, Morales*. 1 Dodson, 299.

29. The intervention of hostilities puts the property of the enemy in such a situation that confiscation may ensue; but unless some step is taken for that purpose, — unless there is some legal declaration of the forfeiture to the Crown — the right of the owner revives on the return of peace. Right of neutral claimant under a decree of costs and damages, suspended by the breaking out of hostilities, during which no proceedings for the forfeiture thereof were taken, *Held* to revive

on the cessation of hostilities, and the country of the claimant becoming an ally. *The Nostra Senora de los Dolores, Morales*. Edwards, 60.

(b) *Exemptions from \* —*

30. If a merchant, British by domicile, and two neutral merchants, his partners, export goods from London to an hostile port, under a licence granted to their broker on behalf of several British merchants, and insure, although the neutrals become enemies before action brought, the broker may, upon a loss incurred, maintain an action against the underwriters to recover the value of the joint interest of the three. *De Tastet v. Taylor*, 4 Taunt. 233.

31. Where a certain trading with an alien enemy for specie and goods to be brought from the enemy's country in his ships to our colonial ports was licensed by the King's authority; *Held*, that an insurance on the enemy's ship, as well as on the goods and specie put on board for the benefit of the British subjects, was incidentally legalised; and that it was competent for the British agent of both parties, in whose name the insurance was effected, to sue upon the policy in time of war, the trust not contravening any rule of law or public policy, and there being no personal disability in the plaintiff on the record to sue. *Kensington v. Inglis*, 8 East, 273.

32. In an action on a policy of insurance, it is no defence, under the general issue, that the persons interested, who were neutrals when the policy was effected and the loss happened, had become alien enemies before action brought. *Harman v. Kingston*, 3 Camp. 152. (Ellenborough.)

33. The British agent effecting a policy on behalf of alien enemies who became enemies after the loss happened, but before the action commenced, is entitled to recover against the underwriter, who had only pleaded the general issue; for such temporary suspension during the war of the assured's right of suit upon a contract

\* 8. An alien enemy holding a bottomry bond upon a cartel ship, for the purpose of enabling her to perform her voyage and bring prisoners, may enforce such bond in the Admiralty Courts of the country to which the vessel belongs, for such vessel is, *pro hac vice*, a neutral licensed vessel; and all persons concerned in her navigation, upon the particular service in which both belligerents have employed her, are neutral in respect to both, and under the protection of both. *Crawford et al. v. William Penn, Peters* (AMERICAN) Circ. C. Rep. 106.

9. An action was raised before the Admiralty Court against an alien, and his ship was arrested. The alien having been assoilized, raised a counter-action for illegal detention of his ship, in which he got decree, and both actions were brought under review of the court of session, pending which, hostilities took place with the country of the alien: *Held* (after consulting the king's advocate-general), that the alien was entitled to insist in his action. *Burgess v. Guild* (1813), 17 F. C. 55. (SCOTCH Rep.)

legal at the time, and liable to be enforced upon the return of peace, cannot be taken advantage of under a plea of perpetual bar, there being no legal disability in the plaintiff on the record to sue. *Flinde v. Wuters*, 15 East, 260.

34. It is no defence to an action on a bill that the plaintiff sues in trust for an alien enemy. *Daubuz v. Morshead*, 6 Taunt. 332.

35. The court would not stay judgment and execution upon a summary application, because the plaintiffs after verdict became alien enemies. *Vanbrynen v. Wilson* (1808), 9 East, 321.

36. An alien enemy commorant here by the King's licence may sue, though he came in time of war. *Wells v. Williams* (1696), 1 Lutw. 35.; S. C. 1 Salk, 46.; S. C. 1 Ld. Raym. 282.

37. A native Spaniard domiciled here in time of war between this country and Spain, having been licensed in general terms by the King to ship goods in a neutral vessel from hence to certain ports in Spain, was held competent to effect an insurance on goods embarked in the protected commerce, and to sue in his own name. *Usparicha v. Noble*, 13 East, 332.

38. Alien enemies are at liberty to sue in the courts of this country for wages earned by them as mariners on a voyage to this country under the protection of a British licence. *The Frederick, Bodom*, 1 Dodson, 266.; *The Maria Theresa, Philips*, 1 Dodson, 303.

39. A native of a neutral state taken in an act of hostility on board an enemy's fleet, and brought to England as a prisoner of war, is not disabled from suing while in confinement on a contract entered into as a prisoner of war. *Sparenburgh v. Banatyne*, 1 B. & P. 163.; 2 Esp. 580.

See *ante*, Nos. 22 & 23,  
and Notes 3, 4, 5.

See LICENCE.

#### 4. Of the forfeiture of the property of —\*

40. Enemies' goods coming into this country may be seized for the use of the Crown. *Land v. North*, 4 Dougl. 266.

41. The rights of a party who, by the intervention of hostilities, becomes an alien enemy, pass to the Crown. *The Charlotte, Avery*, 1 Dodson, 214.

42. It has not been much the practice of modern times to proceed against the property of enemies found in the country; but an inquest of office might now, as heretofore, be had, and such property confiscated. *Ibid.*

43. An enemy has no right to trade with the ports of this country, except by special permission of the government, with the conditions of which permission he must strictly comply, unless prevented by the pressure of an irresistible necessity. Where such conditions are departed from, the character of enemy revives, and his property is subject to confiscation. *The Manley, Hansen*, 1 Dodson, 259.

#### (a) Exemptions.

44. To exempt the property of enemies from the effect of hostilities is a very high act of sovereign authority. If delegated to persons in a subordinate station, it must be exercised either by those who have a special commission granted to them for the particular business, and who in legal language are termed mandatories, or by persons in whom such a power is vested in virtue of any official situation to which it may be considered incidental. No consul in any country, particularly in an enemy's country, is vested with any such power in virtue of his station, *ei rei non preponitur*, and therefore his acts relating to it are not binding. Neither does the Admiral on any station possess such authority. *The Hope and others*, 1 Dodson, 229.; and note thereto, appendix D., at the end of the volume.

45. Certificates exempting the property of enemies from capture, granted by a British consul resident in the enemy's country and the British Admiral of the station, neither having a special commission for such purpose, are in themselves invalid, but may be made effectual by a subsequent ratification by the sovereign autho-

\* 10. The dictum that any body may seize to his own use such goods as belong to an alien enemy, however generally laid down by some of our writers, must, in reason and justice, be restrained to such captors as are authorized by the public authority of the state, residing in the Crown; and as regards inland seizures, to such goods as are brought into this country by an alien enemy after declaration of war without a safe conduct or passport; and there-

fore it has been held that where a foreigner is resident in England, and afterwards a war breaks out between his country and this, his goods are not liable to be seized; and if a contract be made with a foreigner during peace, the right of action upon it is not absolutely forfeited by the occurrence of a war, though it is suspended. 2 *Stephens' Black. Comm.* 79.

11. It has not been the modern usage to extend

rity. Such certificates held to be ratified by a posterior Order in Council, and pronounced for as sufficient exemptions. Ships seized restored accordingly, on captors' expenses being paid by the claimants. *Ibid.*

## ALLEGATIONS.

## I. OF THE ADMISSION OF —

1. *General considerations with reference to —*

2. *Miscellanea.*

## II. EXCEPTIVE ALLEGATIONS.

1. *General considerations with reference to —*

2. *Requisites to the admissibility of —*

3. *What matters are pleadable in — et contra.*

4. *When admissible — et contra.*

5. *Of the suspension of the admission of — until the hearing.*

6. *Allegations responsive to —*  
See PLEADING.

## I. OF THE ADMISSION OF —

1. *General considerations with reference to —*

1. The case of a party is not prejudiced by his not opposing the admission of an allegation, though opposeable, as his opposition might give an advantage to his adversary in causing him to amend his plea. *The Empress, Moran*, 1 Dodson, 369.

2. In considering the admissibility of allegations, the Court exercises a certain degree of discretion upon a view of the whole case: it looks whether the facts pleaded bear remotely or directly upon the question; or whether, if proved, they can make no impression. In doing this the Court exercises a discretion advantageous and convenient for the parties themselves. *Evans v. Knight and Moore*, 3 Phill. 418.

3. In assuming an allegation to be true, for the purpose of determining its admissibility, the Court only assumes to be true those facts pleaded in it capable of satisfactory proof, and not by any means all the several averments which may stand in the allegation, which in effect are mere inferences deduced somehow or other from those facts. *Montefiore v. Montefiore*, 2 Add. 355.

4. The averments are to be taken as true so far only as the facts pleaded justify inferences to the effect of those averments, which, whether they do at all, or,

if so, to what extent, it is for the Court to determine. *Ibid.*

5. The rule of taking the libel as true applies only to averments of facts, not to inferences, which ought to be sparingly introduced. *Neeld v. Neeld*, 4 Hagg. (Eccl.) 266.

2. *Miscellanea.*

6. In a proceeding by plea and proof, by the strict rule of practice the answers to the libel should be given in before the responsive allegation is admitted. The court cannot relax this rule without the consent of both parties in the cause. The admission of a responsive allegation opposed on such ground directed to stand over until such answers were given in. *The Manchester, Macleod*, 1 W. Rob. 94.

7. The admission of an allegation was opposed on the ground that the party giving it in had been condemned in costs, which remained unpaid; but no monition to enforce the payment having been served upon him, the Court overruled the objection. *Smith v. Corry*, 1 Lee, 432.

8. Articles of an allegation which had been in substance pleaded before, rejected, but letters allowed to be pleaded in supply of proof. *Braddyll v. Jehen*, 1 Lee, 568.

9. Two explanatory articles in an allegation admitted. *Roper v. Roper*, 3 Phill. 97.

the right of confiscation of enemy's property found in the country at the beginning of a war. *The Ann Green and Cargo*, 1 Gallison's (AMERICAN) Reports, 292.

12. As between Great Britain and the United States, the 10th article of the treaty of 1794 prohibits it as to debts and money in the funds and banks. *Ibid.*



10. It is competent to the Judge to admit a plea upon condition that the party examines witnesses on that plea only. *Stone v. Stone*, 3 Curteis, 725.

## II. EXCEPTIVE ALLEGATIONS.

### 1. General considerations with reference to — \*

11. An exceptive allegation seldom produces evidence on which the Court can rely for the determination of the cause, such evidence being more to be collected from the substance of the depositions than from anything usually brought forward in such a pleading. *Verelst v. Verelst*, 2 Phill. 151.; *Salmon and others v. Cromwell*, 3 Phill. 220.

12. The Court at all times admits exceptive allegations with great caution. *Verelst v. Verelst*, 2 Phill. 146.; *Salmon and others v. Cromwell*, 3 Phill. 220.

13. A party has a right to the admission of an exceptive allegation to a witness, although the parties producing the witness say they will not rely on his evidence, as the effect of producing a witness clearly perjured may be more or less prejudicial to the party, according to circumstances. *Trevanion v. Trevanion*, 1 Curteis, 422.

14. Exceptive allegations after publication are "*stricti juris*." Their object is the credit of the witness, and not the proof or disproof of the facts in issue in the principal cause. In such a plea, therefore, facts which might have been pleaded in contradiction to the pleas before publication cannot be therein pleaded in contradiction to a witness. Such a plea must contain a contradiction to the deposition clear and capable of proof, and showing that the witness has deposed falsely and corruptly, and the exception must arise out of the evidence, not out of the general character and conduct of the witness. An exceptive allegation not meeting these requisites, rejected. *Burgoyne v. Free*, 2 Hagg. (Eccl.), 480.

15. Any fact must not only be pleaded

more restrictively in an exceptive allegation than before publication, but it must also be more strictly examined to. *Wilkinson v. Gordon*, 2 Add. 171.

16. The Court, though declining to lay down that the particular testimony of a witness may not be excepted to after an exception taken to the general character, stated that it recollected no instance of this double exception to the same witness. *Evans v. Knight and Moore*, 1 Add. 143.

17. Where the main fact depends upon the evidence of some particular witness, and it is necessary to weigh the credit of that witness nicely, the Court is less averse to admitting an exceptive allegation. *Salmon and others v. Cromwell*, 3 Phill. 220.

18. An exceptive allegation lies to the testimony of a witness not examined in the principal cause but examined only in support of an exception to the testimony of a witness in the principal cause, and if admissible *generally*, i.e. if pleading (and within time) facts of a nature *materially* to discredit the witness excepted to, and duly specifying times, places, persons, &c., is clearly entitled to go to proof. *Ball v. Ball*, 3 Add. 9.

19. On the admissibility of an exceptive allegation, where it is doubtful whether the contradiction is relevant or collateral to the issue, the Court should lean rather to admission than rejection. *Trevanion v. Trevanion*, 1 Curteis, 424.

### 2. Requisites to the admissibility of — †

20. If the exception be *contra dicta*, that is, arising out of the depositions of a witness, it must be observed that by allowing such an exception it is not meant that the party shall be at liberty to contravert every declaration of witnesses, but that he may except to their credit and character from what arises out of their depositions; and to do this it must be shown that a witness has misrepresented the matter *corruptly* and *wilfully*, there must be what

\* 1. The rule with regard to the admission of exceptive allegations is, that the evidence of a witness cannot be excepted to as to facts which might have been counterpleaded before publication, nor on points irrelevant to the issue in the cause, unless they are important facts calculated materially to affect the issue. The circumstance that the fact came out extra-articulately and took the party by surprise, without his having had an opportunity of interrogating thereto, will not help the party to the admission of his exceptive plea.

*Keating v. Brooks and others*, January, 1845. Prerog. (not reported).

† 2. Though it is not necessary for the party giving an exceptive plea to suggest motive, the Court will take into consideration whether or not motives can be imputed to the witness in speaking to the facts as to which he is excepted to. Where the materiality of the exception is disputable, the question of motive will weigh with the Court. *Ibid*.

the law calls *falsitas cum corruptione*. *Evans v. Evans*, 1 Hagg. (Cons.), 100, in note.

21. Exceptive allegations must show that witnesses have wilfully sworn falsely. *Verelst v. Verelst*, 2 Phill. 147.

22. An allegation exceptive to the testimony of a witness; to be admissible, must plead matter not pleadable before publication, and it must be such as, if proved, will materially discredit the witness. It must be pleaded too with all possible specification as to times, places, persons, and so on. *Atkinson v. Atkinson*, 2 Add. 484.

23. Where there is ground for making exception to the character of a witness, the rule is universally laid down that the exception taken must not be of an ambiguous nature; and the party excepted to, if on the ground of general bad character, must be attacked in such terms as plainly assert that imputation. *Bailey v. Bradburn*, note to *Evans v. Evans*, 1 Hagg. (Cons.) 99.

*And see antè, Nos. 14, 15. and 18.*

### 3. What matters are pleadable in — et contra.\*

24. Matter pleadable in the principal cause cannot be pleaded after publication in exception to evidence. *Kenrick v. Kenrick*, 4 Hagg. (Eccl.), 127.

25. It is the admitted practice in all courts to receive declarations in opposition to evidence on oath. They may be confirmed by other circumstances, and no one can say that they are of light and slender importance. They go in abatement of credit, and although declarations coming after publication are weakened, yet they are not on that account to be excluded. An exceptive allegation given after publication, and pleading an affidavit made by a witness in contradiction of his previous examination, admitted to proof. *Brisco v. Brisco*, cited in *The Centurion, Wills*, 1 Hagg. 162.

26. An exceptive allegation pleading, declarations and admissions of adverse witnesses that they had deposed falsely, and an affidavit of one of such persons that his deposition was false, &c., admitted to proof. *The Centurion, Wills*, 1 Hagg. 162., note.

27. Facts collateral to the issue cannot

be pleaded in exception to the character of a witness. *Sergeant v. Sergeant*, 1 Curteis, 3.

28. Facts collateral to the issue cannot be pleaded in support of the character of a witness. *Ibid.* 6.

29. Articles of an allegation pleading facts irrelevant to the issue in contradiction to the answers of a witness to interrogatories irrelevant to the issue rejected. *Trevanion v. Trevanion*, 1 Curteis, 443. Affirmed on appeal, 486.

30. The credit of a witness may be impeached by showing him to have made statements out of Court contrary to what he has sworn. *Lock v. Denner*, 1 Add. 360.

31. A party cannot except to a witness by contradicting answers to interrogatories which go to incidental collateral matter, and are not relevant to the issue. *Whish and Woollatt v. Hesse*, 3 Hagg. (Eccl.), 680.

32. Upon the conviction of certain witnesses in a cause on an indictment for perjury preferred against them, the Court will permit such conviction to be pleaded in exception to the testimony of such witnesses. *Westmeath v. Westmeath*, 2 Add. 380.

33. The Court will not admit an exceptive plea that an indictment of witnesses for perjury in their depositions in the cause pending has been preferred and a true bill found, nor delay the hearing till the indictment is tried. *Maclean v. Maclean*, 2 Hagg. (Eccl.), 601.

*And see antè, No. 14.*

### 4. When admissible — et contra.

34. In the Ecclesiastical Courts, the general rule is, that the general character of a witness may be gone into before publication, but not afterwards; where, therefore, the general character of a witness is objected to, such objections should be pleaded when the responsive allegation is given in, unless he can show that the facts have only lately come to his knowledge. *Chapman v. Whiby and Parson*, 3 Phill. 372.

35. Where a witness is *designed* (à fortiori *vouched*) by the one party to precise facts, it is open to the other side to plead before publication *declarations* of the wit-

\* 3. The declarations of a witness, to which he has not been interrogated, cannot be pleaded in exception to his evidence. A general interrogatory

is not sufficient. *Keating v. Brooks and others*, January, 1845. Prerog. (not reported).

ness contrary to those facts, which, if he does not, he shall not plead them *after* publication, in exception to the testimony of the witness, unless they are *noviter perventa*. *Atkinson v. Atkinson*, 2 Add. 484.

*See ante*, No. 24.

5. *Of the suspension of the admission of—  
until the hearing.*

36. The admission of an exceptive allegation may be suspended to the hearing of the principal cause, when the Court will permit evidence to be taken upon, or will finally reject it, according as it then appears that the credit due to the witness attacked is or is not essential to a right decision upon the merits of the principal cause. *Evans v. Knight and Moore*, 1 Add. 138.

37. The admission of an allegation exceptive to the general character of a witness suspended till the final hearing of the cause. *Chapman v. Whitby and another*, 3 Phill. 370.; *Salmon and others v. Cromwell*, 3 Phill. 220.

*And see post*, No. 38.

6. *Allegations responsive to—*

38. The admission of an allegation responsive to an exceptive allegation reserved to the final hearing; the Court being of opinion that part, if otherwise admissible, was not material; and that the remainder, probably, would not, in the event, be of sufficient importance to delay the cause. *Mynn v. Robinson*, 2 Hagg. (Eccl.) 175.

*See PLEADINGS.*

AMELIORATIONS.\*

1. The general rule is, that whoever purchases under an illegal title does so at his own peril, and must take the consequences, both in his purchase and in his own subsequent expenditure upon it, of his inattention to his own security. *The Perseverance*, *Pittor*, 2 C. Rob. 239.

2. In this case, however, which was that of a prize purchased by a neutral under a sentence of condemnation, found to be illegal; it appearing to the Court that the purchase had not been made under circumstances requiring the application of the rule without any alleviation, the money laid out was taken into consideration, making some deduction for wear and tear, and the use of the vessel while in possession of the party making the repairs, and thus getting at the benefit which the original owners were likely to receive from the amelioration. *Ibid.*

3. A purchaser of a vessel which, having been condemned in a neutral port, had been restored to the former owner on the ground of the illegality of such condemnation, decreed to be reimbursed for his actual amelioration of the ship, there being some circumstances in the case indicating a probability that the purchaser might have been

deceived as to the legality of the title; but the Court indicated that such an allowance would not be continued to be permitted after the illegality of such titles should be more generally made known. *The Nostra de Conceicao*, *Cunha*, 5 C. Rob. 294.

4. On re-capture of a neutral (American) ship from the enemy, restitution on salvage decreed to the former owners, and refused to a party claiming under an asserted purchase from the master in Ireland; but, without prejudice to the rights of such party, to be prosecuted in the American courts. Claim of such party for amelioration refused. *The Fanny and Elmira*, *Hicks*, 1 Edwards, 117. 120.

5. Where the master, in consequence of damage sustained and of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England; but the owners, refusing to ratify the sale or consent to the registry of the ship in the plaintiffs' names, put men on board to take possession of her and the cargo; the Court of Chancery, considering it a question of purely legal title, and the taking possession a mere trespass, refused

\* 1. If the Court should decree a sale by the master invalid, where the transaction was free from fraud, it would compel a proper allowance for the

expenditure of the original purchasers in getting off and repairing the vessel. *The brig Sarah Ann*, 2 Sumner's (AMERICAN) Rep. 206.

to interfere by injunction to restrain the owners; but *Held*, that if the plaintiff had acquired no legal title by the purchase, they had no lien in respect of the monies laid out by them in the repairs. *Ridgway v. Roberts*, 4 Hare, 106.

## ANSWERS.

## I. GENERAL CONSIDERATIONS WITH REFERENCE TO —

## II. OF PROCEEDINGS TO ENFORCE —

## III. OF OBJECTIONS TO —

## 1. Generally.

## 2. After publication.

## IV. MISCELLANEA.

## I. GENERAL CONSIDERATIONS WITH REFERENCE TO —

1. In answers, a party is bound only to answer to facts, not to his own motives nor to his belief of the motives of another person: where the plea avers ignorance of the real nature of a transaction by a party to such transaction and to the suit, the other party is, in his answers to such plea, allowed to state facts inferring full knowledge thereof and acquiescence therein. A party is not bound to answer when his answer would criminate himself, nor (*semble*) when it would tend to degrade him. *Swift v. Swift*, 4 Hagg. (Cons.) 139.

2. *Quære* whether a party can refuse to answer to matter not criminatory, but tending to degrade him. *Dysart v. Dysart*, 3 Curteis, 545.

3. Where the answers would subject the party making them to a prosecution for felony, they cannot be insisted upon. *Robins v. Sir William Wolseley*, 1 Lee, 620.

4. Answers are not confined to being mere echoes of the plea, accompanied with simple affirmances or denials; but the respondents are further at liberty to enter into all such matter as may be fairly deemed not more than sufficient to place the transactions as to which their answers are taken, in what they insist to be the true and proper light. *Oliver and Tuke v. Heathcote*, 2 Add. 35.

5. Every averment of a plea must be distinctly and specifically answered (except where the answer might tend to criminate the party), by admission or denial, if the facts pleaded are within the knowledge of the respondent; if not, by his declaring his belief or disbelief, or stating that he cannot form a belief or disbelief on the subject. *Dysart v. Dysart*, 3 Curteis, 544.

6. Answers should not be redundant; the true meaning of which is, that the respondent is not to insert in his answer any matter foreign to the articles he is called upon to answer, although such matter may be admissible in plea, but he may in his answer plead matter by way of explanation pertinent to the articles, even if such matter should be solely in his own knowledge, and to such extent incapable of proof, or he may state matter which can be substantiated by witnesses; but in this latter instance, if such matter be introduced into the answer, and not afterwards put in plea or proved, the Court will give no weight or credence to such part of the answer. *Ibid*.

7. The use of answers is to save the necessity of taking evidence. *Clutton v. Cherry*, 2 Phill. 385.

8. Where answers are not read by the party calling for them, the Court will presume that they do not prove the allegation. *Ibid*.

9. The Court will, under some circumstances, look into the sworn answers of the parties, though not read by the opposite party. *Dalrymple v. Dalrymple*, 2 Hagg. (Cons.) 127.; *Sullivan v. Sullivan*, 2 Hagg. (Cons.) 259.; *Best v. Best*, 2 Phill. 168.

## II. OF PROCEEDINGS TO ENFORCE —

10. In a cause of collision, the owners of the vessel proceeded against being resident in Ireland; decree, for their answers directed to issue in the usual form, and not by letters of request. *The Manchester, Macleod*, 1 W. Rob. 94.

11. The service of a decree for answers upon the *proctor* will not justify the Court in putting the *principal* in contempt if those answers are not brought in. *Durant v. Durant*, 1 Add. 114.

12. A party not giving in his answers on the day of the return of the decree, personally served, will be pronounced contumacious. *Wyllie v. Mott and French*, 1 Hagg. (Eccl.), 33., and notes.

13. A party cannot be pronounced in contempt at the same time that his answers are held to be insufficient. *Morgan v. Hopkins*, 2 Phill. 582.

### III. OF OBJECTIONS TO —

#### 1. Generally.

14. The ancient practice was to give acts on petition exceptive to answers, but never an allegation. *Morgan v. Hopkins*, 2 Phill. 585.

15. When a certificate to a decree for answers has been discontinued, it is still competent to the proctor having discontinued it to object to the answers. *Raymond v. Baron de Watteville*, 2 Lee, 495.

16. Answers objected to on the ground of abusive matter being therein set forth, directed to be reformed. *Ibid.* 499.

17. On objections to answers, it is not open to the counsel for the respondent to contend that the parts of the plea not answered are immaterial or not properly admissible. *Dysart v. Dysart*, 3 Curteis, 546.

#### 2. After publication.

18. Further answers decreed after publication and when the cause stood for hearing on the second assignation; because, as the cause stood, *si non*, the adverse party might have pleaded on that day, and consequently the cause was open to all purposes. *Smith v. Smithson*, 2 Lee, 505.; *Heath v. Heath*, *Ibid.* 562.

### IV. MISCELLANEA.

19. One of the parties in a suit of joint capture having waived the answers of the adverse party, relying upon the evidence of a ship's log-book which proved to be inadmissible, the conclusion of the cause was, on his application, rescinded, for the purpose of taking the answers, but not for the admission of further pleading and evidence. *Le Niemen, Dupotet*, 1 Dodson, 10.

20. In a proceeding by plea and proof, by the strict rule of practice the answers to the libel should be given in before the responsive allegation is admitted. The Court cannot relax this rule without the consent of both parties in the cause. The admission of a responsive allegation opposed on such ground, directed to stand over until such answers were given in. *The Manchester, Macleod*, 1 W. Rob. 94.

## APPEALS.

### I. GENERAL CONSIDERATIONS WITH REFERENCE TO —

### II. OF THE COURTS OF APPELLATE JURISDICTION.

#### 1. Generally.

#### 2. From Vice-Admiralty Courts.

#### 3. In Salvage Suits — see SALVAGE (civil).

### III. FROM WHAT ACTS AN APPEAL LIES — ET CONTRA.

### IV. OF THE RIGHT OF APPEAL.

#### 1. Generally.

#### 2. Of the Crown.

#### 3. How affected by Contempt in the Court below.

#### 4. By what acts perempted — et contra.

### I. GENERAL CONSIDERATIONS WITH REFERENCE TO —

#### 1. An appeal is not frivolous and insin-

### V. OF PROCEEDINGS IN THE COURT BELOW PENDING APPEAL.

#### 1. Generally.

#### 2. After Inhibition served.

### VI. PRACTICE IN —

#### 1. As to time of Appeal.

#### 2. As to the Property in litigation.

#### 3. As to desertion and abandonment of —

#### 4. Miscellaneous.

#### 5. Pleadings in — see PLEADINGS.

#### 6. In Vice-Admiralty Courts — see ADMIRALTY, cap. VII. sec. 2. div. (b).

#### 7. In cases of Prize — see PRIZE, PRIZE AGENT.

#### 8. In cases of Salvage — see SALVAGE (civil).

#### 9. As to Costs incurred in the Court below — see COSTS.

### VII. IN SLAVE SEIZURES — see SLAVE TRADE.

cere merely because it is afterwards advisedly withdrawn. *The Woodbridge, Munings*, 1 Hagg. 77.

#### 2. The appeal suspends the sentence,

but the suit still continues. *Loveden v. Loveden*, 1 Phill. 208.

3. An appeal only suspends the sentence appealed from, does not render it a nullity. *Blyth v. Blyth*, 1 Add. 312.

## II. OF THE COURTS OF APPELLATE JURISDICTION —

### 1. Generally.\*

4. By the 2 & 3 W. 4. c. 92. s. 3. the powers of the High Court of Delegates (the Court of Appeal from the Instance Court of Admiralty) are transferred to the King in Council, and no Commission of Review is thenceforward to be granted.

5. By 3 & 4 W. 4. c. 41. the Judicial Committee of the Privy Council is constituted, and all appeals to the King in Council are to be referred by his Majesty to the Committee to report thereon.†

6. By the 3 & 4 Vict. c. 65. s. 17. the provisions of the 2 & 3 W. 4. c. 92., transferring the appellate jurisdiction of the Court of Delegates in Ecclesiastical and Admiralty causes to the Queen in Council, and of the 3 & 4 W. 4. c. 41., regulating the practice of the Privy Council in such appeals, are extended to all appeals from proceedings instituted in the Court of Admiralty by virtue of the provisions of this act.

7. *Semble*, that the Privy Council will not exercise jurisdiction as a Court of Appeal from the decisions of the Lords Commissioners of the Treasury as to grants by the Crown of property accruing to it by virtue of its prerogative. *Army of the Deccan*, 2 Knapp. 103.

8. On an appeal (prior to the 2 & 3 W. 4. c. 92.) from a decision of the Vice-Admiralty Court of Sierra Leone (condemning a Swedish vessel engaged in the slave trade as prize) to the Admiralty Instance Court, in which Court, as of appeal, the proceedings had been commenced and carried on by both parties; objections to the juris-

diction of such Court of Appeal overruled. *Held*, that the captors having given issue in such Court, could not object to its competency to entertain the cause, and that a Court of civil jurisdiction may take cognizance of and exclude a claim asserted to be founded on principles contrary to general justice on that ground alone. *The Diana, Berthé*, 1 Dodson, 100.

9. On an appeal (prior to the 2 & 3 W. 4. c. 92.) from the Vice-Admiralty Court of St. Croix to the High Court of Admiralty, from a condemnation of an American vessel for a breach of the navigation laws, an objection to the jurisdiction of the Court by the claimants of the vessel and cargo, the appellants, on the ground that by the terms of the capitulation of St. Croix the inhabitants thereof were entitled to a hearing before his Majesty, overruled. *The Tortola, Mc Kie*, 1 Dodson, 124.

See COURTS, cap. I., and post, No. 10.

### 2. From Vice-Admiralty Courts.‡

10. By 3 & 4 W. 4. c. 41. s. 2. all appeals or applications in prize suits, and in all other suits or proceedings in the Courts of Admiralty or in Vice-Admiralty Courts, or any other Court in his Majesty's dominions abroad, which may now be made to the High Court of Admiralty of England, or to the Lords Commissioners in prize cases, shall be made to his Majesty in Council, and not to the High Court of Admiralty or to such Commissioners; and by s. 3. such appeals shall be referred by his Majesty to the Judicial Committee to report thereon.

11. Prior to the 3 & 4 W. 4. c. 41. an appeal would lie to the High Court of Admiralty from a sentence of a Vice-Admiralty Court regularly constituted, and having authority to entertain the suit, though such sentence is, and is afterwards declared to be, a nullity. *The John, Buchanan*, 1 Dodson, 381. But it would not lie if such Vice-Admiralty Court were not duly ap-

\* 1. See the provisions with respect to appeals in prize causes, contained in sect. 37. to 44. of 55 G. 3. c. 160. (the latest prize act, which, however, expired with the last war), and see post, No. 19.

† 2. The 3 & 4 W. 4. c. 41., above referred to, is amended by the 6 & 7 Vict. c. 38. and 7 & 8 Vict. c. 69. (see these Acts in the Appendix). With reference to the jurisdiction of the Judicial Committee of the Privy Council, and the practice in proceedings therein, see 2 Chitty's Gen. Practice, 573., Palmer's

Practice on Appeals to the Privy Council (anno 1831), and Palmer's Supplement thereto (anno 1834), and Macqueen's Practical Treatise on the Appellate Jurisdiction of the House of Lords and Privy Council (anno 1842).

‡ 3. Before the stat. 3 & 4 W. 4. c. 41. appeals from Vice-Admiralty Courts in the West Indies lay to the High Court of Admiralty, and not to the Delegates or Privy Council direct. *The Fabius, Couper*, 2 C. Rob. 248.

pointed. An appeal under such circumstances dismissed. *Ibid.*

12. Appeals in matters of prize from a Vice-Admiralty Court lay (prior to 3 & 4 W. 4. c. 41.) to the Lords Commissioners of Appeal in prize causes, and not to the Court of Admiralty, which latter had no appellate jurisdiction in prize cases. *Ibid.*

### III. FROM WHAT ACTS AN APPEAL LIES — ET CONTRA.\*

13. In the Court of Admiralty no appeal lies before a definitive sentence for a *gravamen* as in the Ecclesiastical Court. *Brown v. Benn*, 2 Ld. Raym. 1248. (5 Ann.), 6 Viner's Abr. 523.

14. In a suit for mariners' wages in the Court of Admiralty, the Judge at the hearing rescinded the conclusion of the cause in order to allow a second witness to be produced in support of the mariners' summary petition, and on two subsequent occasions, on affidavit, also rescinded the conclusion of the cause for the same purpose. From the third rescinding of the cause an appeal was prosecuted on behalf of the owners to the Delegates, who, however, pronounced against the appeal with costs, and remitted the cause. *Henley and Dudderidge v. Morrison*, 2 Hagg. (Eccl.), supplement, 147.

15. The several acts done on one Court day make up but one decree; at least so as to warrant the appellants including the whole (whether of an appealable nature or not) in the *prasertim* of the appeal. *Greg v. Greg*, 2 Add. 284.

16. On an appeal from a grievance in the overruling of certain objections taken in the course of the final hearing to parts of the depositions of witnesses; *Held*, that the hearing of a cause is one continuous act, and that it is not competent to a party to appeal until sentence be given in the cause. Appeal pronounced against accordingly with 10*l.* costs, and cause remitted. *Bullin v. Barry*, 1 Curteis, 618, note; 1 Moore, 98.

*And see post*, No. 34.

17. The hearing of a cause is one continuous act, so that a party aggrieved cannot, during the hearing, appeal from the rejection of the evidence of a witness, or from other incidental matter in the course of it, and thereby stay the further hearing; but he must wait until the decree be made, and then appeal from the decree, which appeal may be as to any compartment of the cause. *Handley and Jones v. Edwards*, 8 Jur. 677., 1 Curteis, 754.

18. The giving of costs is not a matter absolutely unappealable, though such appeals, especially for trifling sums, are much to be discouraged. *Lloyd and Clarke v. Poole*, 3 Hagg. (Eccl.), 477.

### IV. OF THE RIGHT OF APPEAL.

#### 1. Generally.

19. By 38 G. 3. c. 38. s. 2., in prize causes, any persons interested, whether a party or not to the suit in the first instance, may cause an inhibition to be extracted and appeal prosecuted within twelve months after decree appealed from; and by sect. 3. her Majesty in Council may authorize such proceedings being taken, notwithstanding a longer time has elapsed; but by sect. 4., in such special cases, captors are, on requisition of claimants, to deliver copies of account sales, &c. to the King's proctor, who shall defend the appeals, &c.; and captors neglecting so to do, or to obey orders of Commissioners of Appeals, are to forfeit the benefit of this act.

*And see ante*, note No. 1.

20. A party who, by the intervention of hostilities, has become an alien enemy, cannot prosecute an appeal. The Court can pay no attention to his claims in any way. *The Charlotte, Avery*, 1 Dodson, 214.

*And see post*, No. 61.

#### 2. Of the Crown.

21. The Crown may, if it think proper, advance a claim for restitution of a captured vessel belonging to a party who, by the intervention of hostilities, has since be-

\* 4. Although conclusive matter may be filed, or conclusive exceptions to witnesses taken, or within the term a commission for examination of witnesses and the like prayed, and the Judge refuse to admit the same, it has always been the practice not to allow an appeal from such grievances, nor from any interlocutory decree not having the effect of a definitive sentence, because relief may be had against such inconveniences by an appeal from the defini-

tive sentence, in which appeal it is lawful to allege and prove what has not been before alleged and proved. *Clerke's Prae. Adm.* 121., and *Maranta Spec.*, part vi. act 2., therein cited. Certain *gravamina irreparabilia* are, however, held to amount to an interlocutory decree having the effect of a definitive sentence, and are appealable from accordingly. *Ibid.* 123.

come an alien enemy, and may prosecute an appeal from a condemnation thereof, as being entitled to the property of such alien enemy. *The Charlotte, Avery*, 1 Dodson, 214.

22. On an appeal from the condemnation of a ship and cargo (Government stores) in a Vice-Admiralty Court, in which Court a claim had been given by the owner of the ship for the vessel, and by the Government for the cargo, the former of whom had acquiesced in the sentence: *Held* that the Crown was entitled to prosecute an appeal from such condemnation both as to ship and cargo, as the ship must share the fate of the cargo. *The Swift, Begbie*, 1 Dodson, 322. 345.

23. The Crown has no greater right than the subject to be let in to appeal in a general case in which its interests are concerned. *Laing v. Ingham*, 3 Moore, 26.

### 3. *How affected by Contempt in the Court below.*

24. An appearance under protest to an inhibition, on the ground that the appellant, being in contempt in the Court below, had no right to appeal, overruled, the Court holding the contempt to have been waived in the Court below, where, after the writ *de contumace* had been extracted against the appellant, a decree to see proceedings had been taken out, and the proctor of the party acknowledged that his client had received a copy thereof, which allegation was duly recorded in the Court book. *Harrison v. Sparrow*, 3 Curteis, 1.

25. *Quære*, Whether a party in contempt has a right of appeal. *Ibid.*

*See post*, No. 30.

### 4. *By what Acts perempted — et contra.*

26. Praying a Judge to rescind any order perempts any appeal afterwards from that order. *Greg v. Greg*, 2 Add. 276.

27. If a party does acts in furtherance of a sentence, viz. attending the taxation of costs, he bars his right of appeal. *Lloyd and Clarke v. Poole*, 3 Hagg. (Eccl.) 492.

28. The appellants who had contended in Court against a condemnation in costs in the principal cause from the decision in which they had appealed, no mention having at such time been made of the interposition of any appeal: *Held* to have thereby perempted their right of appeal. Protest against such appeal sustained accordingly. *The Clifton, Lightbody*, 3 Hagg. 125.

29. A party having tendered an excep-

tive allegation, the Court permitted it to be brought in, reserving the consideration as to its admission to the hearing of the cause. The party brought in the allegation accordingly, but appealed from such suspension of its admission. The respondent appeared under protest to the appeal, alleging that the appellant, by bringing in the exceptive allegation, subject, as alleged, to the condition that the question as to its admission should be reserved to the hearing, had perempted his right of appeal. The protest was overruled; but on the merits, the decree of the Court below reserving the question as to the admission of the allegation, was affirmed, the party having a right to appeal if, at the hearing, the plea should be improperly rejected. *Wargent v. Hollings*, 4 Hagg. (Eccl.) 246.

30. A party having appeared at the commencement of a hearing and prayed for a decree, afterwards withdrew from the further hearing, in consequence of the rejection of his witness and the refusal of the Judge to suspend the hearing until the appeal from the rejection of such witness should have been determined, and in order not to perempt such appeal, upon which the hearing was continued and concluded and judgment given in pain of his contumacy, he having been thrice called and not appearing: *Held* that such conduct could not be considered as a contumacy disentitling the party to the benefit of an appeal, and protest against an appeal on such grounds overruled accordingly. *Handley and Jones v. Edwards*, 8 Jur. 679.

## V. OF PROCEEDINGS IN THE COURT BELOW PENDING AN APPEAL.

### 1. *Generally.*

31. The Court is not legally bound to defer to an appeal till an inhibition is served. *Middleton v. Middleton*, 2 Hagg. (Eccl.) 138., *Supp. in notis.*

32. In appeals, at least for grievances, the hands of the Court are in no case tied up until the service of the inhibition; and what, or whether any, intermediate steps should be taken, depends upon the particular circumstances of the case, the Judge of the Court *a quo* exercising a sound legal discretion thereon. *Chichester v. Donegal*, 1 Add. 21.

33. Where a party has duly appealed, the Judge *a quo* cannot limit the time for the prosecution of the appeal. *Rookes v. Rookes*, 2 Curteis, 350.

34. An application, on behalf of the pro-



ducents, to suspend the hearing of a cause pending an appeal from the rejection, in the course of the hearing, of the evidence of the drawer and one of the subscribed witnesses to the will, rejected, the rejection of such evidence being held by the Court not to be an appealable grievance, the whole hearing of the cause constituting but one act. The hearing was accordingly continued, and judgment given in the absence of the products. *Handley and Jones v. Edwards*, 1 Curteis, 754.

35. An *attentat*, in the language of the civil and canon laws, is any thing whatsoever wrongfully innovated or attempted in the suit by the Judge *a quo* pending an appeal; but steps taken by the Judge *a quo* after appeal entered, on the same Court day, and on a subsequent Court day, prior to the issue of the inhibition (and even after the issue and service of the inhibition, if the appellant be not founded in his appeal, but not otherwise), are not *attentats*. *Chichester v. Donegal*, 1 Add. 23.

## 2. After Inhibition served.

36. An inhibition, in an appeal by some salvors, does not bar the Court from proceeding to put other distinct salvors, who have not appealed, in possession of the salvage amount awarded them (the only ground of appeal taken being the amount awarded), unless it can be shown that such acts of the Court could prejudice the appellant; nor from granting a decree of appraisalment. *H. M. S. Thetis*, 3 Hagg. 98. 100.

37. In an appeal from a decision of a Vice-Admiralty Court, condemning a vessel for a forfeiture, after inhibition had been personally served on the Judge and Registrar of the Court below, the respondent, and other parties, the Judge of the Court below, on motion and affidavits that the ship was deteriorating in value, decreed a sale of the ship. A monition thereupon issued from the Court of Appeal for the transmission of the proceeds of sale, to which a return was made transmitting the same, less the amount of the costs of the Crown and the fees of the Judge, Registrar, and Marshal. A further monition was thereupon applied for and obtained for the transmission of the proceeds retained by the Court below, to which a special return was made, praying, for the reasons therein set forth, that the question as to the transmission of such proceeds retained might be reserved until the hear-

ing; but, on application of the appellants for an attachment for non-compliance with such second monition, *Held*, that such non-compliance was a contempt, and an attachment decreed accordingly against the Judge, Registrar, and others of the Court below, upon which such proceeds retained were afterwards transmitted. *Barton and others v. The Queen (The Winwick)*, 2 Moore, 19.

38. An inhibition to the Judge of a Vice-Admiralty Court, inhibiting him from doing any thing to the prejudice of the parties appellant pending their appeal, is not to be disregarded at his discretion, although he may consider that he is acting for the benefit of all parties. *Barton v. Field (The Winwick)*, 4 Moore, 273., 8 Jur. 113.

39. It is not sufficient, for the purpose of visiting a Judge of an inferior Court with the penal consequences of an attachment for contempt of the appellate jurisdiction for disregarding an inhibition, to show that he may have committed an error of judgment; but it must be satisfactorily proved not only that there was error, but that such error was wilful, and proceeded from corrupt or improper motives. *Ibid*.

40. A vessel was condemned in the Vice-Admiralty Court of Gibraltar as engaged in the slave trade, from which sentence an appeal was interposed to the Queen in Council, and an inhibition under seal of the Judicial Committee of the Privy Council duly served on the Judge of the Court below and the other parties; after which, on application of the seizor, the Judge of the Court below, on affidavit of the perishable condition of the vessel, decreed a sale of the ship, notwithstanding the inhibition. On application to the Court of Appeal for an attachment against the Judge for costs and damages incurred thereby, the Court granted a rule to show cause; whereupon an act on petition was entered into by both parties, supported by affidavits, upon the hearing of which the Judicial Committee were of opinion that, under the circumstances, the decree of sale was not such a contempt as to entitle the appellants to the attachment prayed. Application refused accordingly, but without costs. *Ibid*.

41. *Semble*, that an inhibition does not remain in force so as to prevent the inferior Court from proceeding on the same, and also on additional facts in a subsequent suit, the original suit having been dismissed in the Court of Appeal by consent of parties. *Smyth v. Smyth*, 4 Hagg. (Eccl.) 72.

## VI. PRACTICE IN—

1. *As to time of appeal.*

42. By 6 & 7 *Vict. c. 38. s. 11.* in all appeals from the Vice-Admiralty Courts of the Cape of Good Hope, and all Vice-Admiralty Courts to the westward thereof, the appeal and petition of reference to Her Majesty must be lodged in the Registry of the High Court of Admiralty and Appeals within twelve months from the pronouncing of the order or decree appealed from, and in all appeals from the Vice-Admiralty Courts to the eastward of the Cape of Good Hope within eighteen months.

*See antè, No. 19.*

43. The High Court of Admiralty (prior to the 6 & 7 *Vict. c. 38.*) would not construe the limitation of time for appeals, from Vice-Admiralty Courts in the West Indies, with the same strictness as would be applied to appeals from Courts of this country, the stat. of *Hen. 8.* then regulating the time of appeals being held not to extend to the plantations, and the Court being therefore left to its discretion as to entertaining appeals therefrom. *The Sally, Joy*, 2 C. Rob. 229.

44. Protest to an appeal (prior to the 6 & 7 *Vict. c. 38.*) from a Vice-Admiralty Court, on the ground that the appeal had not been prosecuted within a year, overruled. *Ibid.* 224.

45. Motion (prior to the 6 & 7 *Vict. c. 38.*), on behalf of a mariner, for leave to enter an appeal in a suit for wages, from a decree of the Vice-Admiralty Court at the Cape of Good Hope eighteen months previously, on the ground that the Court there had pronounced for wages only up to the time of freight being earned, and not on the return voyage up to the time of wreck; and that the mariner had been thereby compelled to seek employment, and had only just returned to London: rejected, the circumstances laid being held to be insufficient to authorize such permission, and the owners and underwriters having settled the whole accounts. *The Mary, Ardlie*, 2 Hagg. 27.

46. An appeal from an award of salvage by magistrates, pursuant to 1 & 2 *Geo. 4. c. 75.*, to the High Court of Admiralty, as permitted by such statute, dismissed, on the ground of notice thereof not having been given within ten days after the making of the award as prescribed by the statute. Respondents appearing under protest, dismissed, with 4*l. nomine expensarum*. *Semble*, that verbal notice to the

magistrate's clerk is not sufficient. *The Industry, Capiter*, 2 Hagg. 73.

*See SLAVE TRADE.*

2. *With reference to the property in litigation.*

47. It is an established principle of Courts of Admiralty that where there is an appeal the property in question cannot be withdrawn but upon security given for the value. *The Woodbridge, Munnings*, 1 Hagg. 76.

48. Money and interest due under a charter party brought into the registry of a Vice-Admiralty Court, pursuant to decree, to abide the order of that Court, permitted, on appeal, to be paid out, on bail being given to answer the appeal. *The Elizabeth, Lisboa*, 1 Hagg. 226.

*See antè, No. 36, 37. 40.*

3. *As to desertion and abandonment of.*

49. A sentence of desertion is the proper remedy of the respondent when an appeal is not duly prosecuted. Failing to put in practice that protection he cannot claim it at the hearing of the cause. *The San Juan, Nepomuceno*, 1 Hagg. 267.

50. In a suit on a charter party in the Vice-Admiralty Court of the Cape of Good Hope, where a protest to the jurisdiction of the Court given by the charterers had been overruled, with costs, after which the charterers brought in, pursuant to the decree of the Court, the money and interest due on the charter party, and prayed leave to appeal to the High Court of Admiralty, the appeal not having been duly prosecuted, motion, to decree the appeal to be deserted with costs, granted. *The Elizabeth, Lisboa*, 1 Hagg. 226.

51. The Court of Appeal only can pronounce an appeal deserted. *Rookes v. Rookes*, 2 Curteis, 350.

52. On an appeal from a decision of the High Court of Admiralty in a cause of damage, after the usual proceedings had been taken in the Court of Appeal (the Judicial Committee of the Privy Council) and the cause assigned for hearing, the proctor of the appellants exhibited a proxy, and declared his parties proceeded no further in the appeal; upon which their Lordships, on motion of an advocate, remitted the cause, and condemned the appellants in costs. *Brownlow and others v. Garson and others*, 4 Moore, 272.

4. *Miscellaneous.\**

53. In appeals from Vice-Admiralty Courts the Court of Admiralty looks to find out the real merits of the question, without attending much to the irregularity of the proceedings in the Court below, or judging by those correcter rules of practice which would be observed in the Court of Admiralty in similar cases. *The Sally, Jay*, 2 C. Rob. 229.

54. If the claimant distinctly apprehended the ground of proceeding and of seizure, he cannot take advantage of great informalities in the proceedings (the libel) before the Vice-Admiralty Court, on appeal therefrom. *The Friendship, Cox*, 1 Dodson, 374.

55. Under 55 G. 3. c. 184. *sched. pt. 1.*, and 5 G. 4. c. 41. *sched. pt. 2.*, a protocol of appeal, being a notorial act, required a five shilling stamp, and the Court of Arches having decided on that ground against the validity of an appeal from the Consistory Court, the defect is not cured by a stamp affixed previous to the hearing in the Court of Delegates on an appeal from that decision. *Smyth v. Smyth*, 4 Hagg. (Eccl.) 72.

56. Security given in the Court of Admiralty cannot be made available in the Court of Appeal. The Court requires fresh security and a new proxy. *Sheffield v. Ball and others*, 2 Lee, 291.

57. On appeal from refusing the prayer of a petition, the appellant who originally prayed to be heard on his petition begins. *Hughes v. Turner*, 4 Hagg. (Eccl.) 47. in note.†

58. The sentence of a Vice-Admiralty Court having condemned a ship, with her tackle, freight, &c., and the Court of Appeal having pronounced against this sentence, and decreed restitution of the ship: *Held*, that the sentence of restitution should be construed to have comprised the several appendages of the ship condemned specifically in the Court below. Freight

decreed accordingly. *The Jennet, Coursell*, 1 Acton, 332.

59. An appeal from a Vice-Admiralty Court to the High Court of Admiralty (on a question of forfeiture of a ship for an illegal importation of slaves) affirmed, notwithstanding the decision of the Court below was not defended by the owners, in whose favour judgment had been given there. *The Two Slaves*, 2 Hagg. 273.

60. Though an affirmative issue to a libel of appeal from a definitive sentence is given, the process must be transmitted where the Court of Appeal has to take any step requiring a knowledge of the proceedings or of the sentence of the Court below. *Courtail v. Homfray*, 2 Hagg. (Eccl.) 3.

61. The Court will not suspend proceedings on appeal for any length of time at the petition of the appellant, and *à fortiori* where such appellant is an alien friend, or one who, by the intervention of hostilities, has become an alien enemy. Application of an appellant, an alien enemy, to suspend proceedings in an appeal until the return of peace, refused. *The Charlotte, Avery*, 1 Dodson, 215.

62. On appeal from the Vice-Admiralty Court at Jamaica, pronouncing for the forfeiture of a ship and cargo for a breach of the navigation laws, such forfeiture being confirmed, the Court refused to disturb the distribution thereof as settled by the Court below, though not conformably to the statute, the appellants being the owners of ship and cargo, and no party interested objecting to such distribution. *The Mary, Miller*, 1 Dodson, 76.

63. Cause affirmed on appeal remitted back to the Vice-Admiralty Court appealed from in order that the respondent might obtain costs and damages which had been there decreed in the cause. *The Slave Grace*, 2 Hagg. 134.

64. By 3 & 4 Vict. c. 65. s. 17. on appeals to the Judicial Committee of the Privy Council from any proceedings instituted in

\* 5. On an appeal from a Vice-Admiralty Court to the High Court of Admiralty, (which appeals, however, now lie to the Judicial Committee of the Privy Council,) the grounds of the decision in the Court below should be transmitted to the Court of Appeal. *The Tortola, M'Kie*, 1 Dodson, 128.

See the order of the Judicial Committee of the 12 Feb. 1845, directing the Judges of the Courts of the Colonies and foreign settlements of the Crown, to give their reasons in writing for the

judgment appealed from, and transmit the same with the record. *Appendix to 4 Moore, part 1.*

† 6. At the hearing before the Judicial Committee of a protest against an appeal, the respondent's counsel, as being for the protest, claimed and were allowed to begin according to the practice of the Court of Admiralty. Their Lordships, however, remarked that such allowance was not to be drawn into a precedent, as it was against the practice uniformly observed in this Court. *Logan v. Burslem*, 4 Moore, 292.

the Court of Admiralty under this act, the notes of the evidence taken, as by this act provided, under the direction of the Judge, shall be certified by him to the Queen in Council, and received there as the evidence given in the Court below; and no evidence shall be admitted in the Court of Appeal to contradict the same; but the Judicial Committee of the Privy Council are not to be thereby prevented from directing witnesses to be examined or re-examined on such facts as to them shall seem fit in the manner directed by the last-recited act.

65. A party who, at the hearing of a

cause, acted in such a manner as to preclude himself from appealing from a part of it (i. e. the rejection of his principal witness, an appeal in respect of which was disallowed, as being from part of the hearing, and therefore not an appealable grievance,) but whose appeal from the remainder was allowed, permitted to amend his appeal so as to embrace such part on payment of the costs to that time, embracing a protest to such appeal on grounds which were held not sustainable. *Hundley and Jones v. Edwards*, 8 Jur. 678.

### APPEARANCE.

Appearance waives any objection so far as respects the formality of the proceedings. *Prankard v. Deacle*, 1 Hagg. (Eccl.) 185.

*In objection to the juris-*

*diction of the Court*—see PRACTICE.

*Of the application for prohibition before appearance*—see PROHIBITION.

### ASSIGNEES.

1. Restitution had passed, *in solidum*, of three fourths of the property claimed, to an American house of trade. Afterwards, on petition, it appeared that one of the partners was an English merchant, and a bankrupt. His assignees prayed a severance of his particular share, to be paid to them as his representatives, for the benefit of his creditors. The Court refused it, as no part of the duty of the Court of Admiralty, saying, that the petitioners must resort to some other authority to make the discrimination between this American partnership stock, for the purpose of subjecting a particular share to a British bankruptcy. *The Jefferson, Dennis*, 1 C. Rob. 325.

2. Assignees are not bound to act with the same degree of liberality as the owner himself. As trustees for creditors, they are not at liberty to submit to demands which may appear at all questionable, but must take the best means in their power to

render the estate of the bankrupt as beneficial as possible to the persons with the care of whose interests they are entrusted. *The Alexander, Tate*, 1 Dodson, 278.

3. Assignees are in no better situation in opposing a bottomry bond than owners where there is no bankruptcy. *The St. Catherine, Sinclair*, 3 Hagg. 253.

4. Assignees of a bankrupt shipowner have a *persona standi* to appear for the benefit of the general estate, and contest the appropriation of the proceeds of the ship, against the assignees of the freight seeking to make the ship alone liable in the first instance, and this notwithstanding the shipowner had, prior to his bankruptcy, assigned his interest in the ship to other parties not before the Court, as a security for money advanced. *The Dowthorpe, Lofty*, 2 W. Rob. 73.

*Claims of—against proceeds in registry*—see SHIP.

### ATTACHMENT.

#### I. OF THE PRACTICE OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO —

#### II. WHERE GRANTED.

#### III. WHERE REFUSED.

#### IV. ENFORCEMENT OF — WHERE POSTPONED.

#### IV. WHERE SUPERSEDED — ET CONTRA.

See CONTEMPT.

# I. OF THE PRACTICE OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO —

1. The High Court of Admiralty has the power to arrest or attach in the first instance for a contempt, though such is not the usual practice. On motion for an attachment a monition decreed to show cause why an attachment should not issue for a contempt in taking the cargo of a derelict from a warehouse in which it had been deposited by the agents of the Admiralty. *Motion on a ship unknown*, 1 C. Rob. 331.

## II. WHERE GRANTED.\*

2. A vessel was arrested at suit of a part owner, to give bail for her safe return; and an appearance having been given for the master and owner of the other moiety, a commission to take bail was decreed; shortly after which, and without the commission being executed, the master, with the assistance of the mate and six others, took forcible possession of the ship, and carried her to Jersey, where she was arrested for a debt due from the master, and sold to A. B. The Court, on motion founded on affidavit, decreed an attachment against the master and mate; and a monition against A. B., who had assisted in such illegal seizure, and five others, to show cause why they should not be attached for joining in such seizure. A new warrant of arrest against the vessel was at the same time moved for, but no order was made by the Court thereon. A. B. and C. D., his son, one of the parties monished, having moved the Court to dismiss them from the effect of the monition, but such application being opposed, and an attachment against them moved for, the Court ultimately decreed an attachment against A. B., as having possession of the vessel, but dismissed C. D., rejecting the motion for an attachment against him, on the ground that the application should have been sooner followed up, and that he was not one of the principal offenders. The mate, after two months imprisonment, petitioned the Court to be released, on the ground that he acted in ignorance, under

the master's orders, and had a sick wife and aged mother dependent on him, and acknowledging his misconduct. His petition was not opposed by the part owner, at whose prayer he was attached; and the Court decreed his discharge. *The Petrel, Russell*, 3 Hagg. 299.

3. Motion for attachment against a harbour-master, for seizing and carrying off, for non-payment of harbour dues, portions of the rigging and stores of a ship under arrest, in the custody of the officer of the Court, granted, and attachment decreed accordingly. *The Harmonie, Pralm*, 1 W. Rob. 179.

4. In an appeal from a decision of a Vice-Admiralty Court, condemning a vessel for a forfeiture, after inhibition had been personally served on the Judge and Registrar of the Court below, the respondent and other parties, the Judge of the Court below, on motion and affidavits that the ship was deteriorating in value, decreed a sale of the ship. A monition thereupon issued from the Court of Appeal for the transmission of the proceeds of sale, to which a return was made, transmitting the same, less the amount of the costs of the Crown, and the fees of the Judge, Registrar, and Marshal. A further monition was thereupon applied for, and obtained, for the transmission of the proceeds retained by the Court below, to which a special return was made, praying for the reasons therein set forth, that the question as to the transmission of such proceeds retained might be reserved until the hearing; but on application of the appellants for an attachment for non-compliance with such second monition, *Held*, that such non-compliance was a contempt; and an attachment decreed accordingly against the Judge, Registrar, and others of the Court below; upon which such proceeds retained were afterwards transmitted. *Barton and others v. The Queen (The Winwick)*, 2 Moore, 19.; and see *The Dove, and the Nordiska, Wanskopen*, cited in the same case, 4 Moore, 275.

On motion subsequently for an attachment against the Judge for costs and damages incurred by reason of such sale, monition decreed against him to show

\* 1. Where a vessel was under arrest in the Court of Admiralty in a cause of bottomry, and a distress was levied by magistrates at the suit of the seamen for wages, under 7 & 8 Vict. c. 112. s. 15., by authority of which, notwithstanding notice from the officer in possession, the tackle apparel and

furniture were sold, the Court granted a monition against the auctioneer to show cause why an attachment should not issue against him for removing the same, who thereupon restored them. *The Westmoreland*, 4 Notes of Cases, 173.

cause why such an attachment should not issue. An appearance, however, having been given thereto, and an act on petition entered into on his behalf, *Held*, that under the circumstances, and in the absence of improper motives on the part of the Judge, a sufficient case for such an attachment was not made out by the complainants. *Ibid.* 4 Moore, 273.

5. Attachment against the owner of a collier, who, having appealed from a salvage award, which was affirmed with costs, had not obeyed a monition against him for their payment, decreed on motion. *The John Dunn*, Colville, 3 Hagg. 168.

6. If a party, having authorized a proctor to appear for him and no proxy having been demanded, such party having been condemned in costs, should endeavour to evade payment thereof on the plea that he had not given any proxy to the proctor proceeding for him, the Court would decree him to be attached. *The Whillemine*, 1 W. Rob. 340.

7. An attachment for contempt of Court, decreed against a brig of war's agent, residing in the island of Granada, for non-payment into the mixed Commission Court at Sierra Leone of the proceeds of a slave capture, as directed by a monition from the Court of Admiralty. *The Florida*, *Provença*, 2 W. Rob. 97.

8. The Court will issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the supersedeas to the arrest. When a supersedeas issues, instantaneous obedience must be paid to it. *The Towan*, 8 Jur. 222.

*In cases of rescue*—see

ADMIRALTY, cap. IV. sect. 4.

*Against prize agents*—

see PRIZE AGENTS.

### III. WHERE REFUSED.

9. Attachment against a captor, for proceeds of prize decreed on appeal to be restored, refused, the proceeds having been taken possession of by the government, and being out of his hands. *The San Juan Nepomuceno*, Yambi, 1 Hagg. 268.

10. In a cause of possession brought by the owners of six-eighth shares, against owners of the remaining two-eighth shares, which latter were the ship's husbands, and had the vessel in their dock for repair; possession having been decreed to the owners of the greater interest, and a ship keeper put on board by them; motion for an attachment to enforce the due execu-

tion of the decree of possession on the ground that such ship's husbands refused to permit any person to enter their dock for the purpose of making the vessel water tight or to repair her themselves, and had placed a large vessel before her, so that she could not come out of dock, rejected.

*The John of London*, Ellick, 1 Hagg. 342.

### IV. ENFORCEMENT OF—WHERE POSTPONED.

11. Attachment against bail directed under the circumstances, not to issue for a month. *The Vreede*, Hoffker, 1 Dodson, 8.

12. Attachment against agent decreed, but ordered to be directed to the Judge of a Vice-Admiralty Court, where the party resided, with special instructions to enforce the same at a given time, and under certain circumstances only. *Note to Harregaard*, *Peterson*, 1 Hagg. 23.

### V. WHERE SUPERSEDED—ET CONTRA.

13. Attachment under which a party had been confined five years, decreed to be superseded. *Note to Harregaard*, *Peterson*, 1 Hagg. 23.

14. A vessel under arrest by warrant of the Admiralty Court, was forcibly removed to Scotland. An attachment issued against the party guilty of the contempt, and an order of concurrence was, upon petition, made by the Lord Ordinary in Edinburgh. The party was under this last order arrested in Scotland and brought to this country, where he was taken under attachment by the Marshal of the Admiralty, and lodged in the Queen's Bench prison. The Lord Ordinary was subsequently moved to issue a note of suspension of the arrest, and, after hearing counsel, ordered a warrant of liberation to issue. From this last order an appeal was instantly lodged in the Inner Court of Scotland. The Judge of the Court of Admiralty on motion grounded on these circumstances, directed the prisoner to be released. *The Mathesis*, 8 Jur. 582., 2 W. Rob. 286., 3 Notes of Cases, 133.

15. Motion to supersede an attachment for informality in the endorsement on the writ, rejected. *The Plym*, 8 Jur. 990.

16. An attachment for non-payment of money can only be superseded by the Judge of the Court of Admiralty, by reason of irregularity in its execution. A contempt of this nature is excepted from the operation of the twenty-first section of 3 & 4 Vict. c. 65. *Plym*, 8 Jur. 990.

See CONTEMPT.

## AVERAGE.\*

I. OF THE VARIOUS DESCRIPTIONS OF AVERAGE, AND THE PRINCIPLES THEREOF.

II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO—

III. WHERE THE LIABILITY TO GENERAL AVERAGE ATTACHES.

IV. WHERE THE LIABILITY TO GENERAL AVERAGE DOES NOT ATTACH.

V. ON WHAT PROPERTY THE LIABILITY TO GENERAL AVERAGE ATTACHES—ET CONTRA.

VI. REFERENCES TO REGISTRAR AND MERCHANTS AS TO—

I. OF THE VARIOUS DESCRIPTIONS OF AVERAGE, AND THE PRINCIPLES THEREOF.

1. General average is for a loss incurred, towards which the whole concern is bound to contribute *pro rata*, because it was undergone for the general benefit and preservation of the whole. *The Copenhagen, Menzies*, 1 C. Rob. 293.†

2. Simple or particular average, is not a very accurate expression, for it means damage incurred by or for one part of the concern, which that part must bear alone, so that in fact it is no average at all. Still the expression is sufficiently

understood and received into familiar use. *Ibid.*

3. The loss of an anchor or cable, the starting of a plank, are matters of simple or particular average for which the ship alone is liable. Should a cargo of wine turn sour on the voyage, it would be a matter of simple average, which the goods alone must bear, and there might be a simple average, for which each would be separately liable under a misfortune happening to both ship and cargo at the same time, and from a common cause; as, if a water spout should fall on a cargo of sugars, and a plank from the same violence should start at the same time. *Ibid.*

\* 1. For further cases on this head in the Courts of Common Law and Equity, see *Harrison's Digest*, vol. iii. p. 6235. *et seq.*; and on the subject of average generally, *Smith's Mercantile Law*, cap. iii. sect. 5., *Abb. Sh.* part iv. cap. 10., 1 *Park on Ins.* 277. *et seq.*

† 2. The law of general average is of extreme antiquity, being confessedly derived from that passage in the Rhodian code preserved by Justinian:—" *Lege Rhodia cavetur ut si leonada navis gratia jactus mercium factus sit omnium contributione sarciantur quod pro omnibus datum est.*" *Smith's Merc. Law*, 294. The principle of this rule has been adopted by all commercial nations with more or less variation in practice. *Abb. Sh.* 475. The goods, however, must be thrown overboard; the mind and agency of man must be employed: if the goods are forced out of the ship by the violence of the waves, or are destroyed in the ship by lightning or tempest, the merchant alone must bear the loss. Again, they must be thrown overboard to lighten the ship, not by the caprice of the crew or passengers, in which case they, or the master and owners for them, must make good the loss. And the act must be done for the sake of all, not because the ship is too heavily laden to prosecute an ordinary voyage through a tranquil sea, which would be the fault of those who had shipped or received the goods on board, but because at a moment of distress and danger their weight or presence prevented the extraordinary exertions required for the general safety. *Abb. Sh.* 475.

3. Various corollaries have been deduced from the rule of general average. If in the act of jettison, or in order to accomplish it, or in consequence of it, other goods in the ship are broken, damaged, or destroyed, the value of these also

must be included in the general contribution. So if to avoid an impending danger, or repair the damage occasioned by a storm, the ship be compelled to take refuge in a port, which it cannot enter without taking out a part of her cargo, which part happens to be lost in the barges employed to convey it on shore, this loss also, being occasioned by the removal of the goods for the general benefit, must be repaired by general contribution; but if after such removal for such purpose the ship and remaining cargo be lost, whilst the portion of cargo so removed be saved, the proprietors of the latter shall not contribute to the loss of the others, because the safety thereof is not owing to that loss. So also (see *Shepherd v. Wright*, 1 Shower, P. C. 18.) if, on the expectation of a hostile attack, part of the cargo be taken out and sent away and saved, and the ship, with the remainder of the cargo, fall into the hands of the enemy, the part saved shall not contribute to make good the loss. *Abb. Sh.* 476.

4. The principle of general average does not apply to goods merely, but extends to the ship and its furniture, stores, guns, provisions, boat, and tackle, and to the goods of the master as well as of the merchant. *Ibid.* 478.

5. All loss which arises in consequence of extraordinary sacrifices or expenses incurred for the preservation of the ship and cargo comes within the description of general average. 1 *Park on Ins.* 277.

† 6. The general contribution to be made by all parties towards a loss sustained by some for the benefit of all, is sometimes called by the name of general average to distinguish it from special or particular average (a very incorrect expression used to denote every kind of partial loss or damage hap-

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO —

4. *Seem*, that the High Court of Admiralty has no jurisdiction to entertain questions of general average. *The Constancia*, 10 Jur. 849., 4 Notes of Cases, 677.

## III. WHERE THE LIABILITY TO GENERAL AVERAGE ATTACHES.

5. Where it was necessary to unload the ship as well for its own repair, which had become indispensable, as for the preservation of the cargo, the expense of transshipment was considered to have upon it the character of general average. *The Copenhagen, Menig*, 1 C. Rob. 289.

6. Where a ship is obliged to put into port for the benefit of the whole concern, the charges of loading and unloading the cargo, and taking care of it, and the wages and provisions of the workmen hired for the repairs, become general average. *Da Costa v. Newnham*, 2 T. R. 407.

7. Where a ship, in the course of her voyage, was run foul of by another ship and damaged, and the captain was, in consequence, obliged to cut away part of the rigging, and to return to port to repair the damage, &c., without which the ship could not have prosecuted her voyage, *Held*, that the expenses of repairs, so far as they were absolutely necessary to enable the ship to prosecute the voyage, but no further, and of unloading the goods for the purpose of making repairs, were a general average: *Secus*, the master's expenses during the unloading, repairing, and reloading, and crimpage to replace deserters during the repairs. *Plummer v. Wildman*, 3 M. & S. 482., Abb. Sh. 478.

8. The shippers of goods *held* liable to contribution to general average for stores necessarily and by the advice of the mate thrown overboard after the ship was captured, and while in possession of the enemy; for the capture, without condemnation, did not divest the property of the owners while a *spes recuperandi* remained. *Price v. Noble*, 4 Taunt. 123., Abb. Sh. 479.

## IV. WHERE THE LIABILITY TO GENERAL AVERAGE DOES NOT ATTACH.

9. The right of war is a right *in re*, and the Court of Prize accordingly attends only to the *res ipsa* and the *onus* attaching on the property in right of possession. The cargo has not in any manner a right of possession against the ship. It may have the *jus in rem*, but it has not the *jus in re*, and consequently no right of detention existing at the time of seizure. Therefore a demand for average against a neutral ship, decreed to be restored, made by the captors in right of the cargo, (which had been condemned,) on the ground of part of the cargo having been applied to the repairs of the ship prior to the seizure, pronounced against. *The Hoffnung, Hardrath*, 6 C. Rob. 383.

10. Where the contract of affreightment was determined by the vessel's going in for repairs which had become indispensable, and the cargo was transhipped: *Held*, that no part of the repairs could be charged on the cargo; but where such contract had been determined by the payment of freight, *pro rata itineris*, the conveyance of the cargo to its ultimate destination *held* to belong to the cargo only. *Copenhagen, Menig*, 1 C. Rob. 289. 293.

11. Where, for the safety of a ship, it becomes necessary, during the voyage, to put into a port to refit; the expense of refitting is not a general average. *Jackson v. Charnock*, 8 T. R. 509.

12. The wages and provisions of the crew while the ship remained in port, whither she was compelled to go for the safety of ship and cargo, in order to repair a damage occasioned by tempest, *Held* not to be the subject of general average; nor the expenses of such repair, nor the wages and provisions of the crew during her detention in port, to which she returned, and where she was detained on account of adverse winds and tempest, nor the damage occasioned to ship and tackle by standing out to sea with a press of sail in tempestuous weather, which press of sail was necessary for that purpose, in order to avoid an impending peril of being driven on shore and stranded. *Power v. Whitmore*, 4 M. & S. 141.

pening either to the ship or cargo from any cause whatever), and sometimes by the name of *gross average*, to distinguish it from *customary*, mentioned

in the bill of lading, which latter species is sometimes called also *petty average*. Abb. Sh. 473.



13. A ship being unable to escape from a privateer resisted the attack, beat off the privateer, reached her port, and delivered her cargo in safety: *Held*, that neither the expense of repairing the ship, nor of curing the wounds of the sailors, nor of the ammunition, was the subject of general average. *Taylor v. Curtis*, 2 Marsh. 309., 6 Taunt. 608., Holt, 192., 4 Camp. 337., Abb. Sh. 480.

14. The damage done to a vessel and her tackle from hoisting an extraordinary press of sail to escape a privateer, *Held* not to be general, but a particular average. *Covington v. Roberts*, 2 New Rep. 378.; 2 Marsh. on Ins. 547.

#### V. ON WHAT PROPERTY THE LIABILITY TO AVERAGE ATTACHES — ET CONTRA.\*

15. A bottomry bondholder has nothing to do with averages of any kind. *The Gra-*

*titudine, Mazzola*, 3 C. Rob. 264., 2 Park on Ins. 898.

16. By the law of England there is neither average nor salvage on a bottomry bond. *Joyce v. Williamson* (1749), K. B. cited in 2 Park on Ins. 563. *Walpole v. Ewer* (1789), K. B. Ibid. 565.

#### VI. REFERENCES TO REGISTRAR AND MERCHANTS WITH REFERENCE TO —

17. In a case of recapture, a quantity of oil having been thrown overboard, as asserted, to lighten the ship in a state of distress; on application to the Court to direct an average restitution to be made *pro rata* of the whole property, reference decreed to the registrar and merchants to report whether any or what part of the oil had been thrown out for the benefit of ship and cargo. *The Eleonora Catharina, Kneagh*, 4 C. Rob. 156.

### BAIL.

#### I. OF BAIL BONDS GENERALLY.

1. *From major to minor part owners for the safe return of the ship from voyages of which the latter disprove* — see OWNERS, BONDS.
2. *To secure the payment of costs* — see SECURITY FOR COSTS.
3. *On the withdrawal of the property in dispute pending appeal* — see APPEAL, PRIZE.
4. *By prize agents* — see PRIZE AGENTS.

#### I. OF BAIL BONDS GENERALLY.

1. Bail bonds are not mere personal securities given to individual captors, but are given to the Court to abide adjudication of all events at the time impending before it. Bail bonds are subject to more enlarged considerations in this Court than at com-

#### II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —

#### III. OF THE LIABILITY OF —

#### IV. WHAT WILL AMOUNT TO A RELEASE OF — ET CONTRA.

#### V. OF PROCEEDINGS AGAINST —

#### VI. PRACTICE AS TO —

#### VII. MISCELLANEA.

See BONDS.

mon law, where they are considered as mere personal securities for the benefit of parties to whom they are given. They are here regarded as pledges for the thing itself, in all points fairly in adjudication before the Court. *The Nied Elwyn, Niess*, 1 Dodson, 53.

2. In a cause of possession, bail is taken

\* 7. Where the captain of a vessel, in order to prevent a quantity of dollars from falling into the hands of an enemy by whom he was about to be attacked, threw them into the sea, and was immediately afterwards captured, the loss was considered not to be a general average. Abb. Sh. 479.

8. By the law of England and the civil law, in the case of damage to ship or cargo in consequence of collision between two vessels, happening without

fault of either party, the proprietors of the ship or cargo injured must bear their own loss, such a misfortune being considered as a peril of the sea, and not a subject of general average. Ibid. 501.

9. In cases of general average, mariners do not contribute for their wages except in the single instance of ransom of the ship. Ibid. 504.

10. Freight must contribute to a general average, so also must jewels. 1 Park on Ins. 293, 294.

as a substitute for the substance of the ship, but does not include a stipulation for any earnings that may be made. Application for bail to cover intermediate earnings, refused. *The Peggy, Finlay*, 4 C. Rob. 304.

## II. OF THE JURISDICTION OF THE COURT OF ADMIRALTY AS TO —\*

3. An obligation taken in the Admiralty to appear and sue there, is suable in that Court, for it is a stipulation in nature of bail at common law. *The King v. Perry* (1688), 3 Salk. 23.; *S. P. Wick v. Strutt* (1694), Comb. 320.; *Par v. Evans* (1663), T. Raym. 78., and see 2 Ld. Raym. 1286.

## II. OF THE LIABILITY OF —†

4. In determining the liability of bail, the Court will be governed by general principles, not by accidental circumstances accompanying the case. *The Harriett, Bulmer*, 1 W. Rob. 197., 6 Jur. 197., 1 Notes of Cases, 327.

5. In investigating the liability of bail, the principle of law which the Court will take for its guide is the same as that which applies in cases of principal and surety; and in applying this principle the Court will be governed by the same rules which prevail in the courts of law and equity, and if a court of equity would relieve, though a court of law could not, this Court would consider it to be its duty to afford relief, as exercising a jurisdiction equitable as well as legal. *Ibid.*

6. The liability of the bail is founded on the personal responsibility of the owner, and restricted thereto. *The John Dunn, Place*, 1 W. Rob. 161.

7. Sureties are only bound to the extent of the obligation expressed in their bond, and not beyond its plain and obvious meaning. *The Harriett, Bulmer*, 1 W. Rob. 192.

8. Bail are responsible to none but the parties in the action to which they have given bail. *The Saracen*, 10 Jur. 398.

9. Where an appearance to the action and bail has been given, the decree of the Court cannot be extended as to the bail beyond what they, who are strangers to the cause, have voluntarily made themselves

responsible for. *The Volant, Merchant*, 1 W. Rob. 368.

10. Bail given to answer adjudication as to portion of cargo being Danish property cannot, on the cargo being afterwards condemned to the Crown in consequence of war with Denmark, be compelled to make payment at the suit of the Crown under that condemnation; such condemnation having no connection with the question to answer which the bail was given. Bail dismissed. *The Nied Elwin, Niess*, 1 Dodson, 50.

11. In a cause of damage, the bail having by the usual bond bound themselves to pay what should be adjudged by the Court with the expenses, cannot (on the damage being pronounced for, with a reference to the registrar and merchants,) be called upon to pay a sum fixed by private settlement and agreement between the parties, though in acts of court, as the amount of the damage in lieu of the reference to the registrar and merchants; nor can they either be called upon for the payment of the costs in such cause, separate and distinct from an adjudication for damages. Motion for attachment against the bail in both respects rejected. *The Harriett, Bulmer*, 1 W. Rob. 193., 6 Jur. 197., 1 Notes of Cases, 327.

12. An agent of captor is compellable under the prize act (in force in 1811), but not prior to that act, to make payment of portion of cargo, which had been condemned nine years previously, but of which condemnation the captor had not been apprised through the negligence and inattention of the agent, and the Court would enforce payment from him rather than from one of the bail, the other having since become bankrupt. *The Vreede, Hoffker*, 1 Dodson, 7.

13. Bail given to the actual captor to answer adjudication of property which was, from the locality of the capture, subsequently condemned to the King in his office of Admiralty. *Held*, to be answerable to the Admiralty. *The Nied Elwin, Niess*, 1 Dodson, 53.

14. Liability of sureties once cancelled cannot be revived. *The Harriett, Bulmer*, 1 W. Rob. 204., 6 Jur. 197., 1 Notes of Cases, 327.

\* 1. The Admiralty has jurisdiction if the suit be there upon a bond given for an appearance there. *Cro. El.* 685.

† 2. Bail in the principal cause are not bound

in the appeal. *Clerke's Prax. Adm.* 129., and see the authorities there cited. But if the cause be remitted to the Court *a quo*, the bail remain bound. *Ibid.*

#### IV. WHAT WILL AMOUNT TO A RELEASE OF — ET CONTRA.

15. Bankruptcy does not discharge a surety in the Admiralty. *The Vreede, Hoffher*, 1 Dodson, 2.

16. A surety is not released from his bond by mere lapse of time, unless where payment was to have been made within a limited time, and the time has been extended without his consent or knowledge. *Ibid.* 7.

17. If a man become surety for another for a sum of money to be paid at a stipulated period, and the person to whom the money is due extends the time of payment without the knowledge or consent of the surety, that is in the legal sense a giving time, and the consequence would be that the surety would be absolved from responsibility. Such a principle, however, cannot be applied to bonds given in the Court of Admiralty where no time is specified. Mere passive neglect or delay to move onward would not be such a giving time, for mere forbearance does not exonerate the bail, at least in the Court of Admiralty. Settling the amount of damage out of court is not a giving time in the strict legal acceptance of the term. *The Harriett, Bulmer*, 1 W. Rob. 195., 6 Jur. 197., 1 Notes of Cases, 327.

18. Bail given to answer adjudication as to cargo captured and which had been afterwards condemned, decreed to be enforced, on application to that effect nine years after condemnation. An attachment decreed against one of the sureties (the owner and the other surety having become bankrupt) at the suit of the captor, he having shown the *laches* not to have arisen with himself but with the agent, who, under the circumstances, could not be rendered liable. *The Vreede, Hoffher*, 1 Dodson, 8.

19. Acts of the adverse party, which might by possibility have prejudiced the bail, entitle the bail to be discharged. It is not necessary to inquire whether any prejudice has actually occurred. *Quære*, if any alteration whatever is made in the contract or the mode of executing it, is not the responsibility of the bail dis-

charged? *The Harriett, Bulmer*, 1 W. Rob. 198., 6 Jur. 197., 1 Notes of Cases, 327.

20. In a cause of damage, in which a decree was obtained in favour of the party suing, and a reference to the registrar and merchants directed, the proctor of that party having agreed the amount of damage in acts of Court with the adverse proctor without such reference, such acts *held* to estop both parties from further carrying out the decree of the Court as regards the reference to the registrar and merchants, and the obligation of the bail being to pay what shall be adjudged by the Court, and such agreement not being an adjudication by the Court, *Held*; further, that such acts enured to a release of the responsibility of the bail, and that such responsibility could not be again revived. Motion for attachment against bail rejected, and bail dismissed. *Ibid.*

#### V. OF PROCEEDINGS AGAINST —

21. *Quære*, is it not necessary to proceed against the principal in the first instance, before proceedings can be instituted against the bail? No such necessity, however, can arise where the principal is a bankrupt. *The Harriett, Bulmer*, 1 W. Rob. 193.

*See antè*, No. 12.

#### VI. PRACTICE AS TO —\*

22. Motion to dismiss bail and cancel the bail bonds in pursuance of an agreement between the litigant parties, granted. *The Partridge, Betham*, 1 Hagg. 82.

23. Sureties are no parties in the suit, nor can they interfere with the conduct of the cause at any time, except where the principal is guilty of fraud, or there is collusion between him and the adverse suitor, when the sureties are entitled to apply to the Court, alleging such fraud or collusion. *The Harriett, Bulmer*, 1 W. Rob. 199. 203., 6 Jur. 197., 1 Notes of Cases, 327.

24. By the 14th section of the stat. 16 Geo. 3. c. 5. (made to prohibit all trade and intercourse with the then American colonies, and since repealed), it was provided that where ships, &c. had been taken from the Americans and condemned as

\* 3. The proctor of the plaintiff at the production of bail may protest against the admission or reception of them and their insufficiency, and may pray for more ample security. If this protestation be neglected, the party is excluded from demanding more substantial security at any future period of

the cause. *Clerke's Praz. Adm.* 29. On the death or insolvency, however, of either of the bail, further security may be demanded. *Ibid.* 31. n. And also if, being sufficient at the time of their being tendered as bail, they afterwards become *lapsed facultatibus*. *Ibid.* 33.

lawful prize in a Court of Admiralty, and the sentence of condemnation had been appealed from, "the execution of any sentence so appealed from as aforesaid" should not be suspended by reason of "such appeal, in case the party or parties appellate should give sufficient security, to be approved of by the Court in which such sentence should be given, to restore the ship, &c., concerning which such sentence should be pronounced, or the full value thereof to the appellant or appellants, in case the sentence so appealed from was reversed." *Held*, that though the security taken by virtue of this section in a Court of Vice-Admiralty was in the form of an acknowledgment of a debt to the King, yet being taken in a Court not of record, it was not a strict recognizance, but operated as a stipulation by the parties to abide the decision of the Court of Appeals, and that the Court of Appeals was not bound by this section to interpret the words "full value" by any definite measure, but had a discretionary power of declaring what was the full value, and of enforcing from the sureties payment of what it so declared to be the full value. *Brymer v. Atkins*, 1 H. Black. 164., 2 Tidd's Prac. 983.

#### VII. MISCELLANEA.

25. An application to take a cargo on

bail before adjudication is not granted in the Prize Court but upon consent of the captors. *The Copenhagen, Mullens*, 3 C. Rob. 178.

26. Where property, whether in the Prize or Instance Court, in a case of capture or salvage, is delivered on bail to the claimant, he is bound on the one hand by the appraised value, and cannot be called upon, on the other hand, to bring in more than the appraised value. *The Betsey, Winpenny*, 5 C. Rob. 295.; *The Jonge Bastiaan, Steyting*, 5 C. Rob. 322.

27. A Danish and a British ship came into collision, in consequence of which the Danish ship was entirely lost and the British ship received some damage. An action having been entered on behalf of the owners of the Danish ship and bail given, a cross action was entered on behalf of the owners of the British ship, and bail demanded but refused. On motion on behalf of the owners of the British ship, that proceedings in the action against them should be stayed until the bail required by them should be given: the Court rejected the motion, and *held* that the property being entirely gone and the owners foreigners resident abroad, there was no way of enforcing the giving the bail required, but that such parties must give bail for costs in their action. *The Seringapatam*, 10 Jur. 1065.

### BLOCKADE.\*

#### I. GENERAL CONSIDERATIONS AS TO —

#### II. OF THE RIGHT OF —

#### III. OF THE RIGHTS AND DUTIES OF THE BLOCKADING FORCE.

#### IV. WHAT IS SUFFICIENT TO CONSTITUTE A BLOCKADE — ET CONTRA.

#### V. OF THE CONSTRUCTION OF —

1. *As to the extent of —*
2. *As to partial relaxations of —*

#### VI. OF THE MAINTENANCE OF —

#### VII. OF THE CONTINUANCE OF —

1. *What acts will constitute a cessation of — et contra.*
2. *Where held to be relaxed — et contra.*

#### VIII. OF THE RESUMPTION OF —

#### IX. WHAT CIRCUMSTANCES WILL VITIATE — ET CONTRA.

#### X. PECULIAR CASES OF —

#### XI. BREACHES OF — ET CONTRA.

(with reference to the knowledge of the blockade by the delinquent vessels.)

1. *Warning where necessary — et contra.*
2. *Of the sufficiency of notice.*
3. *Of the proof of knowledge.*
4. *Of the notification of —*
5. *After notification.*

(a) *Of the time allowed for notification to take effect.*

\* 1. On the doctrine of Blockade as a branch of the Law of Nations, see *Manning's Commentaries on the Law of Nations* (anno 1839).

6. *Of the notification of revocation of —*
7. *Other cases.*

## XII. BREACHES OF — ET CONTRA (by Ingress).

1. *What is sufficient to constitute ingress — et contra.*
2. *Of the legal presumption arising from ingress.*
3. *What acts will amount to — et contra.*
  - (a) *Effect of destination to a blockaded port.*
  - (b) *Deviation and concealed destination.*
  - (c) *Notwithstanding contingent destination.*
4. *Trading by British vessels to neutral blockaded ports.*
5. *By merchants of African States.*
6. *Approaching the blockaded port.*
  - (a) *To make inquiries as to the existence of the blockade.*
  - (b) *For other purposes.*

## XIII. BREACHES OF — ET CONTRA (by Egress).

1. *What acts will amount to — et contra.*
2. *Of the effect of egress.*
3. *Egress with cargo shipped before the blockade.*
4. *Egress in ballast.*
  - (a) *Where the vessel had entered before the blockade.*

- (b) *After transfer between neutrals in the blockaded port.*

5. *Conveyance of neutral distressed mariners under orders of the neutral state.*

6. *Other cases.*

## XIV. BREACHES OF — ET CONTRA.

1. *Acts in the blockading port amounting to — et contra.*
2. *Other cases.*

## XV. BREACHES OF —

1. *When the offence is terminated — et contra.*
2. *Liability of cargo where affected by the delinquency of the ship — et contra.*
3. *Acts of agents how far affecting their principals, owners of cargo.*
4. *Exemptions from forfeiture in respect of —*
  - (a) *Treaty of free ship, free goods.*
  - (b) *Licenses where exempting — et contra.*
  - (c) *Permission and misinformation of captors.*
  - (d) *On grounds of necessity and distress.*
  - (e) *Other excuses.*
5. *When captors may seize for —*
6. *Practice in suits for —*

## I. GENERAL CONSIDERATIONS AS TO —

1. A legal blockade cannot exist where no actual blockade can be applied. If the besieging force cannot apply its power to every point of the blockaded state, it is no blockade of that quarter where its power cannot be brought to bear. An internal canal navigation where no blockade existed or could exist, *Held* exempt from all consequences of blockade. *The Stert, Johnson*, 4 C. Rob. 66.

2. There is no occupation which so completely unites, and, as it were, identifies vessels engaged in it, as a blockade. *The Ville de Varsovie*, 2 Dodson, 311.

3. A blockade imposed for the purpose of obtaining a commercial monopoly, for the private advantage of the state which lays on such blockade, is illegal and void, on the very principle on which it is founded; but particular licences will not vitiate a

blockade. *The Fox and others*, 1 Edwards, 320.

## II. OF THE RIGHT OF —

4. A declaration of blockade is a high act of sovereign authority; and a commander of a king's ship is not to extend it. *The Henrick and Maria*, 1 C. Rob. 148.

5. The right of a belligerent to impose a blockade is a severe right, and as such not to be extended by construction. *The Juffrow Maria Schraeder, Greenwold*, 3 C. Rob. 154.

6. Although it be true, in general, that a declaration of blockade is an act of sovereignty, yet a commander who goes to a distant part of the world must be held to carry with him sufficient authority to act as well against the commerce of the enemy as against the enemy himself; and for that purpose to declare a blockade. *The Rolla, Coffin*, 6 C. Rob. 364.

7. This country has no right to interrupt communications between a neutral government and its minister at a blockaded port; and the Court would be extremely tender of interposing any difficulties in the way of such a correspondence. *The Drummond*, Langdon, 1 Dodson, 104.

### III. OF THE RIGHTS AND DUTIES OF THE BLOCKADING FORCE.

8. Blockading ships are at liberty to take a prize if it comes in their way, but they are not to chase to a distance, for that would be a desertion of their duty of blockade. *La Melanie*, Lafitte, 2 Dodson, 130.

### IV. WHAT IS SUFFICIENT TO CONSTITUTE A BLOCKADE — ET CONTRA.

9. There are two sorts of blockade — one by the simple fact only, the other by a notification accompanied with the fact. *The Neptunus*, Kuyp, 1 C. Rob. 171.

10. A blockade may exist without a public declaration, although a declaration, unsupported by the fact, will not be sufficient to establish it. But the fact duly notified on the spot is of itself sufficient, for public notifications between governments can be meant only for the information of individuals; and if the individual is personally informed, that purpose is still better obtained than by a public declaration. *The Mercurius*, Gerdes, 1 C. Rob. 82.

11. A proclamation by a commander without an actual investment will not constitute a legal blockade. *The Betsey*, Murphy, 1 C. Rob. 93.

12. A blockade is constituted by there being a force stationed to prevent communication, and notice or prohibition to the party. *The Frederick Molke*, Boysen, 1 C. Rob. 86.

13. The assembling together of ships to stop the egress of vessels from a bay on the enemy's coast, *Held* to constitute the commencement of a blockade, and not the sending a summons to surrender. *The Naples Grant*, 2 Dodson, 284.

14. To constitute a blockade not only should the intention to shut up the port be generally made known to vessels navigating the seas in the vicinity, but the blockaders should maintain such a force as would be sufficient to enforce the blockade. *The Nancy*, Hurd, 1 Acton, 57.

*See post*, No. 37.

### V. OF THE CONSTRUCTION OF —

#### 1. *As to the extent of* —

15. Blockade of Holland, *Held* not to be violated by a destination to Antwerp, and the Scheldt to be a conterminous river, though considered as shut up, and appropriated to the use of Holland in former treaties between this country and Holland. Restitution. *The Frau Isabe*, Pieper, 4 C. Rob. 63.

16. The Order in Council of the 26th of April, 1809, imposing a blockade on all ports and places under the government of France, *Held* not to extend to places temporarily under the dominion of the French. Restitution accordingly of neutral ship and cargo bound to a port so situated. *The Luna*, Southworth, 1 Edwards, 190.

*See post*, Nos. 88 to 91.

#### 2. *As to partial relaxations of* —

17. A ship employed in the coasting trade of Sweden, and belonging, in moieties, to a Swede and two British subjects: *Held*, not protected by the Instructions of 20th June, 1810, allowing certain relaxations to Swedish vessels; but which was held to apply only to vessels entirely Swedish. Condemnation accordingly, by reason of trading at a neutral port, which, the British flag having been excluded therefrom, had been declared in Orders of Council to be in a state of blockade. *The Success*, Smith, 1 Dodson, 131.

18. Relaxation of blockade made in favour of the Hanse Towns by the British government in 1806: *Held*, not sufficient to sanction a foreign trade to the ports of the enemy. Condemnation accordingly (affirming the decision of the High Court of Admiralty), for a breach of the blockade of the Elbe and Weser. *The Sophia Elizabeth*, Prott, 1 Acton, 46.; and *Charlotte Sophia*, Moller, and *Klein Jurgen*, Prott, 1 Acton, 56.

### VI. OF THE MAINTENANCE OF —

19. The blockade imposed by the Order in Council of the 26th April, 1809, was never intended to be maintained in the regular mode of enforcing blockades, viz., by stationing a number of ships, and forming, as it were, an arch of circumvallation round the mouth of a prohibited port, where, if the arch fails in any one part, the blockade itself fails altogether; but is sufficiently maintained by a ship stationed

any where in the neighbourhood of the coast, preventing vessels entering such port. *The Arthur, Rathbone*, 1 Dodson, 423.

20. Under particular circumstances, a single vessel may be adequate to maintain the blockade of one port, and co-operate with other vessels at the same time in the blockade of another neighbouring port. Condemnation accordingly, (reversing the decision of the Vice-Admiralty Court,) for breach of a blockade so maintained. *The Nancy, Woodberry*, 1 Acton, 63.; *The Actress, Tinker, The Freedom, Herrick*, and *The Adrian, Dalche*, 1 Acton, 64.

21. The periodical appearance of a vessel of war in the offing, *Held* not to amount to a continuation of a blockade which had been previously rigorously maintained by a number of ships. Restitution accordingly, (reversing the decision of the Vice-Admiralty Courts in America and the West Indies) of ships which had entered ports so asserted to be blockaded. *The Nancy, Hurd*, 1 Acton, 57.

22. A blockading squadron may lawfully be at any distance convenient for shutting up the port blockaded, provided it does not obstruct any other. *Naylor v. Taylor*, M. & M. 205.

#### VII. OF THE CONTINUANCE OF —

##### 1. *What acts will constitute a cessation of — et contra.*

23. There are two sorts of blockade: one by the simple fact only, the other by a notification accompanied with the fact. In the former case, when the fact ceases (otherwise than by accident or the shifting of the wind) there is immediately an end of the blockade; but where the fact is accompanied by a public notification from the Government of a belligerent country to neutral Governments, *prima facie*, the blockade must be supposed to exist till it has been publicly repealed. *The Neptuneus, Kuyp*, 1 C. Rob. 171.

24. It is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind (if the suspension and the reason of the suspension are known), that will be sufficient in law to remove a blockade. *The Frederick Molke, Boysen*, 1 C. Rob. 87.; *The Columbia, Weeks*, *Ibid.* 156.

25. The principle that when a blockading squadron is driven off by adverse winds, neutrals are bound to presume it

will return, and that there is no discontinuance of the blockade, cannot be extended to the case of a blockading squadron driven off by a superior force. *The Hoffnung, Schmidt*, 6 C. Rob. 116.

26. The raising of a former blockade by the appearance of a superior force, is a total defeasance of that blockade and its operations. *Ibid.* 112.

27. A ship sailed on a voyage from a port in France to St. Lucar, or, if that port should be in a state of blockade, to some other Spanish port, about a month after notification of the blockade of St. Lucar, the blockading squadron of which had been, however, notoriously temporarily driven off by the enemy. She was seized off the French coast, and proceeded against as for breach of the blockade of St. Lucar. The penalty of breach of blockade *Held*, under the circumstances and the dubious state of the actual blockade at the time, not to attach. Restitution: *The Triheten, Wallen*, 6 C. Rob. 65.

28. Chasing suspicious vessels in the neighbourhood of a blockaded port by the blockading squadron, *Held* not to work a cessation of the blockade. Condemnation: *The Eagle, Marsan*, 1 Acton, 65.

*See post*, No. 31.

##### 2. *Where held to be relaxed — et contra.*

29. Where, in the blockade of Havre (*anno* 1798-9), it appeared that particular ships, by the remissness of the blockading force, had been permitted to go in: *Held*, that the ships themselves were not liable to condemnation, but the cargoes which they were bringing out were condemned. *The Juffrow Maria Schröder, Greenwoold*, 3 C. Rob. 147., and cases cited therein, 158, 159.

30. The blockade not held to be relaxed as to ships which were not the objects of such remissness. *Ibid.*

*See post*, No. 101.

#### VIII. OF THE RESUMPTION OF —

31. The raising of a former blockade by the appearance of a superior force, is a total defeasance of that blockade and its operations. It must be renewed again by notification before foreign nations can be affected with an obligation of observing it as a blockade of that species still existing. The mere appearance of another squadron would not restore it, but the same measures would be necessary for the re-com-

mencement that had been required for the original imposition of the blockade; and foreign merchants would not be bound to act on any presumption that it would be *de facto* resumed. Restitution (but with captor's expenses) of a ship and cargo proceeded against on the ground of breach of such an asserted blockade *de facto*. *The Hoffnung, Schmidt*, 6 C. Rob. 112.

32. The port of Cadiz having been placed under blockade by notification and the presence of a blockading squadron, which was afterwards driven off by a superior force, the appearance of a fleet off the port shortly afterwards, prohibiting the ingress and egress of all vessels, *Held*, from the notoriety of the fact and the general knowledge of the intention of the fleet as blockading the port, to amount to a blockade *de novo*, without the necessity of a formal notification thereof, sufficiently to bind neutral vessels in the blockaded port. A neutral ship condemned accordingly for breach of such blockade by egress (affirming the decision of the Vice-Admiralty Court of Gibraltar). *The Hare, Chew*, 1 Acton, 252.

#### IX. WHAT CIRCUMSTANCES WILL VITIATE — ET CONTRA.

33. The permitting by the blockading force some unprivileged ships to go in and others to come out, would vitiate even a blockade by notification; but such permission accorded to certain slave ships, from motives of humanity, *Held* not to work such a result. The liberation of certain vessels after seizure and detention for breaking the blockade, *held* not to amount to renunciation of the rights of blockade. *The Rolla, Coffin*, 6 C. Rob. 374.

34. Particular licences will not vitiate a blockade. *The Fox and others*, 1 Edwards, 320.

#### X. PECULIAR CASES OF —

35. It is to a great extent true of a blockade of the Elbe that it is a blockade imposed not upon the *country* but upon the *enemy* in the interior; that it is directed principally against the enemy, and that it is only incidentally and by unavoidable consequences that the trade of the neutral neighbourhood is made subject to it. These considerations, under circumstances admitting of any latitude of interpretation, would entitle parties to the indulgence fairly to be applied to their

case. *The Spes, Cornelis, and The Irene, Lubben*, 5 C. Rob. 76.

*See No. 18.*

#### XI. BREACHES OF — ET CONTRA.

(*With reference to the knowledge of the blockade by the delinquent vessels.*)

##### 1. Warning where necessary — et contra.

36. Where vessels sail without a knowledge of the blockade a notice is necessary, but if they can be affected with the knowledge of the fact a warning is not required. *The Columbia, Weeks*, 1 C. Rob. 156.

37. A blockade may commence *de facto* by a blockading force giving notice on the spot to those who come from a distance, and who may therefore be ignorant of the fact. Vessels going in are in that case entitled to a notice before they can be justly liable to the consequences of breaking a blockade, but it is quite otherwise with vessels coming out of the port, which is the object of the blockade; there no notice is necessary; after the blockade has existed *de facto* for any length of time, it is impossible for those within to be ignorant of the forcible suspension of their commerce; the notoriety of the thing supersedes the necessity of particular notice to each ship. *The Vrouw Judith, Volkerts*, 1 C. Rob. 152.

38. Notoriety of the fact of blockade *de facto*, *Held* sufficient to affect a master, admitted to be cognizant, without warning on the spot. Condemnation of ship and cargo. *The Tutela, Reinstrock*, 6 C. Rob. 177.

##### 2. Of the sufficiency of notice.

39. Notice of a general blockade of the coast of Holland, untrue in fact, is not a legal notice of a blockade of Amsterdam really existing. *The Henrick and Maria*, 1 C. Rob. 148.

##### 3. Of the proof of knowledge.

40. The evidence as to the existence of a blockade should be clear and decisive. *The Betsey, Murphy*, 1 C. Rob. 93:

41. On the point of knowledge the Court must be satisfied that the party had knowledge of the blockade, and *the belief* of a captor of the notoriety of the blockade is not such evidence as will alone convince the Court that the party had knowledge. *Ibid.*



42. After a limited time it lies *primd facie* on the party to show that he was not apprised of the fact of the blockade. *The Hurtige Hane, Dahl*, 3 C. Rob. 328.

*See post*, No. 117.

#### 4. Of the notification of—

43. Although a notification of blockade does not, *proprio vigore*, bind any country but that to which it is addressed, yet in a reasonable time it must affect neighbouring states with knowledge as a reasonable ground of evidence. A vessel seized for breach of blockade by egress condemned, the Court holding the master to have been cognizant of the blockade, although his government had received no notification thereof, and he and his crew swore to ignorance of the fact. *The Adelaide, Rose*, note to *The Neptunus, Hempel*, 2 C. Rob. 111.

44. Notification of blockade through the enemy's government *Held*, under the circumstances, not invalid. *The Rolla, Coffin*, 6 C. Rob. 368.

45. Objection to terms of notification of blockade, as abridging some of the usual rights of neutrals in such cases in not permitting egress with cargoes laden before the notification, overruled. *Ibid.* 370.

#### 5. After notification.\*

46. When a blockade has been notified to a foreign government, it is the duty of that government to communicate the information to its subjects. A neutral master can, therefore, never be heard to aver against a notification of blockade that he is ignorant of it. If he is really ignorant of it, it may be a subject of representation to his own government, and may raise a claim of compensation therefrom, but it can be no plea in the court of a belligerent. *The Neptunus, Hempel*, 2 C. Rob. 110.; *The Welvaart Van Pillau, Bolter*, *Ibid.* 130.

47. In the case of a blockade *de facto*, it is otherwise. *The Neptunus, Hempel*, *Ibid.* 110.

48. When a blockade has been publicly notified to the government of a country,

parties in that country entering into contracts after such notification must be taken to have knowledge of its existence. *Me-deiros v. Hill*, 8 Bing. 231.; *Naylor v. Taylor*, 9 B. & C. 718., Ab. Sh. 601.†

*See post*, Nos. 68. 70. to 75., 83. to 86., 123. to 125.

#### (a) Of the time allowed for notification to take effect.

49. A vessel left Riga on the 2d July, 1798, and was alleged to have committed a breach of blockade, no previous admonition having been given at the time of capture. It was considered that the notice, if any, must have been under the public declaration; and the public notification to the foreign ministers having been given on the 11th of June, the probability was, that the news had reached Riga before the vessel sailed. The Court, however, would not take it as an established fact, and ordered affidavits as to that point. On proof of the vessel having left Elsinour on the 19th of July, 1798, *Held*, that the master must, therefore, be taken to have received notice of the blockade. Condemnation. *The Ringende Jacob, Krep- lien*, 1 C. Rob. 91.

50. Time for constructive notice considered. *The Calypso, Schultz*, 2 C. Rob. 298.

51. Public notification of the blockade of Amsterdam was made in June, 1798. Orders for cargo were given by a neutral American merchant to the shipper in the blockaded port in February and March preceding, and shipment thereof took place about March, 1799. *Held*, that there had not been sufficient time to give the neutral an opportunity of countermanding. Restitution accordingly. *The Adelaide, Bose*, 3 C. Rob. 284.

52. In the same case shipments of cargo were ordered by American merchants in October, 1798. *Held*, that the parties must have been cognizant of the blockade at that time. Condemnation. *Ibid.* 286.

53. In the same case similar orders were given by similar merchants in September, 1798. Restitution. *Ibid.*

54. In the same case in another claim, the date of the orders did not appear, but

\* 2. A vessel may sail for a blockaded port after a notification of blockade, for the purpose of inquiry whether the blockade continues. 1 *Park on Ins.* 180.

† 3. The rule that the notification of a blockade

is notice to all the subjects of the nations to which the notification has been made, is open to some relaxation for the benefit of commerce, and in cases of insurance, knowledge of the blockade by the assured must be proved. 1 *Park on Ins.* 177.

the invoice and bill of lading were dated November. Restitution. *Ibid.*

55. A neutral vessel sailed from Rotterdam on the 28th of March, 1799; blockade of the ports of the United Provinces was notified to the foreign ministers on the 21st of March, and inserted in the Gazette on the 26th. *Held*, that a week was not sufficient time to affect parties with a legal knowledge of the blockade. *The Jonge Petronella, Kens*, 2 C. Rob. 131.

56. As to Americans, there had been some relaxation of the rule as to the effect of a notification of a blockade existing in Europe. They were not exempted from it, but it was considered fair to say, that lying at such a distance, where they cannot have constant information of the state of the blockade, whether it continues or is relaxed, it is not unnatural that they should send their ships conjecturally upon the expectation of finding the blockade broken up after it had existed for a considerable time. If they were held rigidly to the rule that obtains in Europe, that the blockade must be held to exist until the revocation is actually notified, the effect of it would last two months longer upon them than on the European nations. *The Betsey, Goodhue*, 1 C. Rob. 334.

57. It is a distinction of reasonable equity to give rather a more liberal allowance of time for notice of blockade to merchants in America. In addition to the calculation of distance, an allowance should be made for accidents, by which the general intercourse (even after the allowance of distance) is liable to be retarded. *The Adelaide, Bose*, 3 C. Rob. 283.

#### 6. Of the notification of the revocation of—

58. It is the duty of a country notifying a blockade, to notify the revocation also. A vessel which sailed for Amsterdam five months after notification of the blockade thereof, no evidence of notification of a revocation thereof being adduced, condemned for breach of blockade, the Court holding that in the absence of proof of notification of revocation, the blockade must be presumed to be still existing. *The Vrouw Johanna, Okken*, 2 C. Rob. 109.

#### 7. Other cases.

59. Plea of ignorance of blockade overruled, and ship and cargo condemned for breach of blockade. *The Mentor, Whitney*,

1 Acton, 60.; *The Robert, Thomas*, *Ibid.* 62.

### XII. BREACHES OF — ET CONTRA. (By Ingress.)

#### 1. What is sufficient to constitute ingress — et contra.

60. A ship going into the roads of a blockaded port within the protection of its batteries, and where ships of large burthen are usually unlivered by lighters, must be considered as in the port itself; since for the purposes of enforcing a blockade it is not necessary to restrict the meaning of the word "port" to the limits of the particular local port regulations, which may not extend beyond the pier head. *The Neutralitet, Zeverver*, 6 C. Rob. 34.

#### 2. Of the legal presumption arising from ingress.

61. The legal presumption arising from entering a blockaded port, will be that the ship went in for the fraudulent purpose of delivering her cargo, and her coming out again without having delivered her cargo, will not of itself oust that presumption and remove the illegality, as some unexpected change of circumstances may have altered her intention. *The Charlotte, Elliot*, 1 Edwards, 252.

#### 3. What acts will amount to — et contra.

62. Sailing with an intention of breaking a blockade, is beginning to execute that intention, and is an overt act constituting the offence. From that moment the blockade is fraudulently invaded. *The Columbia, Weeks*, 1 C. Rob. 156.

63. Facts held insufficient as proof of final intention to break a blockade. *The Henrick and Maria*, *Ibid.* 148.

64. A ship cannot enter a blockaded port, even in ballast. *The Comet, Mix*, 1 Edwards, 32.

65. A neutral ship which sailed for a blockaded port in ballast for the purpose of bringing away enemy produce which had become the property of neutral merchants before the blockade, condemned. *Ibid.*

66. Sending goods into another port with a view to introduce them into a blockaded place by interior land or canal communication, is not a breach of the blockade. *The Jonge Pieter, Musterd*, 4 C. Rob. 79.

67. The mere passing through a canal leading to another sea with an intention of forwarding the voyage, such canal passing through the territories of a belligerent power declared to be in a state of blockade, *Held* not to be a violation of such blockade, or of an Order of Council prohibiting all trade with the ports of such power *inter alia*, but not interdicting the passage of such canal. *The Julia, Ropes*, 1 Dodson, 169. n.

68. A blockade may be broken by obstinacy as well as by fraud, i. e., by an obstinate adherence of the master (after notice) to a first intention to enter the blockaded port. *The Henrick and Maria*, 1 C. Rob. 147.

69. A ship which actually comes within reach of capture by the blockading squadron will be considered as guilty of a wilful breach of blockade, if the circumstances were such that a prudent man would have inquired whether that were the blockading squadron, although the captain was actually ignorant of its being so, not having inquired. *Naylor v. Taylor*, M. & M. 205.

(a) *Effect of destination to a blockaded port.*

70. There is this distinction between a blockade *de facto* and a blockade by *notification*; that in the latter the act of sailing to a blockaded port is sufficient to constitute the offence, but in a blockade existing *de facto* only, no presumption arises as to the continuance, and the ignorance of the party may be admitted as an excuse for sailing on a doubtful and provisional destination. *The Neptunus, Hempel*, 2 C. Rob. 110.

71. If a vessel sail for a blockaded port after having received notification of the blockade, the act of sailing is to be considered as a breach of the blockade. *The Vrow Johanna, Okhen*, Ibid. 109.

72. The mere act of sailing to a port which is blockaded at the time the voyage is commenced, is not an offence against the Law of Nations, where there is no premeditated intention of breaking the blockade, if it shall be found to continue in force when the ship arrives at the port. *Medeiros v. Hill*, 8 Bing. 231., Abb. Sh. 601.

73. A policy on goods from Liverpool to any port in the River Plata was effected after notification in the London Gazette that such ports were blockaded. The ship after such notification sailed from Liverpool and

was taken: *Held*, that the voyage insured was not illegal, as the vessel might sail for Buenos Ayres without contravening the Law of Nations, for the purpose of inquiring whether the blockade continued. *Naylor v. Taylor*, 4 M. & R. 526., 9 B. & C. 718.; *S. P. Dalgleish v. Hodgson*, 5 M. & P. 407., 7 Bing. 495.

74. An American ship captured on a voyage from Philadelphia, with a contingent destination to Bremen if not under blockade, proceeded against as for a breach of the blockade of that port on the ground that, at the time of sailing, it was known in America that Bremen was under blockade, and that the ship's papers did not disclose in explicit terms the place at which the inquiry as to the continuance of the blockade was to be made; restored, and captors condemned in costs (affirming the decree of the High Court of Admiralty), it appearing that Heligoland, whence pilots were always procured to secure the insurance of vessels entering that harbour, was the usual place for vessels to make inquiry. *The Dispatch, McKeever*, 1 Acton, 163.

75. American (neutral) ships proceeded against for breach of blockade imposed by Order in Council of April, 1809, forbidding all trade to any part of France, as a retaliatory measure upon the French, Berlin, and Milan decrees, condemned on the ground of such illegal destination and of failure of proof of the revocation of the French decrees to which such Order in Council was retaliatory. *Fox and others*, 1 Edw. 311.; *Snipe and others*, Ibid. 381.

(b) *Deviation and concealed destination.*

76. An American neutral ship and cargo bound ostensibly to St. Sebastian's in Spain, but held on report of Trinity Masters to have been at the time of capture in a course inconsistent with such a destination, condemned for a breach of blockade; the Court holding the legal conclusion to be, that the port of her real destination, which was dissembled in her papers, was so dissembled because it was one which could not safely be disclosed. *The Mentor, Williams*, 1 Edw. 207.

77. Ship and cargo condemned on facts tending to show an illegal concealed destination to a blockaded port. *The James Cook, Jougain*, 1 Edw. 261.

78. On questions arising on the destination of the vessel, the evidence of the master and mate are not entitled to any advan-

tageous preference, but their testimony must be outweighed by that of the common mariners, although in other cases the Court is disposed to give great attention to their evidence. *Ibid.*

*See post, No. 114.*

(c) *Notwithstanding contingent destination.*

79. The perversity and obstinacy of the master in going into a blockaded port after being warned off, *Held* to defeat the effect of a contingent destination. Condemnation of the ship and cargo accordingly. *The Shepherdess, Miller*, 5 C. Rob. 262.

4. *Trading by British vessels to neutral blockaded ports.*

80. British vessels cannot trade to ports of a neutral country declared in Orders of Council to be in a state of blockade. Moiety owned by British subjects of a vessel taken so trading, condemned by reason of such trading. *The Success, Smith*, 1 Dodson, 134.

5. *By merchants of African States.*

81. Merchants of the African States are not exempted from the observance of the law of blockade, though in some instances they may be entitled to a more relaxed application of the law of nations. Such persons *Held*, on facts, to have been cognisant of the blockade, and cargo claimed by them, condemned accordingly. *The Hurstige Hane, Dahl*, 3 C. Rob. 324.

6. *Approaching the blockaded port.*

82. It is no unfair rule of evidence to hold, as a presumption *de jure*, that if a ship, under the pretence of going further on, approach *cy pres* close up to the mouth of a blockaded port, so as to be enabled to slip in without obstruction, she goes there with an intention of breaking the blockade; and if such an inference may possibly operate with severity in particular cases where the parties are innocent in their intentions, it is a severity necessarily connected with the rules of evidence, and essential to the effectual exercise of the right of blockade. *The Neutralitet, Zeverver*, 6 C. Rob. 35.

(a) *To make inquiries as to the existence of a blockade.*

83. In Europe, where the different States

have constant intelligence, it will never be permitted to a ship to sail, with a knowledge of a blockade, under pretence of a further inquiry at the very spot blockaded. A Danish vessel seized for breach of blockade, averring such an excuse, condemned. *The Posten, Hyll, note to The Betsey, Goodhue*, 1 C. Rob. 335.

84. The proper place for neutrals bound to a port under blockade to ascertain whether the blockade is at an end, is not the mouth of the blockaded port, or by inquiry of the blockading squadron, but at some port of the blockading country on the way. *The Betsey, Goodhue*, 1 C. Rob. 334.

85. Directions of the owner, respecting the probable continuance of the blockade, will not justify a vessel in coming to the mouth of the blockaded port for inquiry. Condemnation. *The Spes, Cornelis, and The Irene, Lubben*, 5 C. Rob. 76.

86. A ship, proceeded against for a breach of blockade of the Elbe, being taken, sailing, pursuant to instructions of the owner to the master, to inquire of the vessels cruising off the Eyder respecting the existence of the blockade, restored (reversing the decision of the High Court of Admiralty), and the captors condemned in the costs of both Courts, the Court holding that such an inquiry to be made so near the blockaded port, after public notification of the blockade, did not, under the peculiar circumstances and the variable nature of the blockade in question, subject the ship to condemnation, the owner appearing to have given such instructions *bonâ fide*, and without any intention of fraud. Before, however, the appeal was pronounced for, further proof was given, pursuant to the directions and by the permission of the Court, explanatory of the instructions given by the owner to the master. *The Little William, Brown*, 1 Acton, 141.

*See antè, Nos. 68. to 75., and post, Nos. 123. to 125.*

(b) *For other purposes.*

87. Approximation to the blockaded port, so as to expose the blockader's force to the batteries on the coast, cannot be permitted under a purpose of taking a pilot for a neighbouring port. Condemnation. *The Charlotte Christine, Petersen*, 6 C. Rob. 101.; *The Gute Erwartung, Gay*, *Ibid.* 182.; *The Neutralitet, Zeverver*, *Ibid.* 30.; *The Arthur, Rathburn*, Edw. 202.

### XIII. BREACHES OF—ET CONTRA. (By Egress.)

#### 1. *What acts will amount to — et contra.*

88. Where neutral merchants had ordered of their agents a shipment to be made at Amsterdam after the blockade of that place, but the shipment was actually made at Rotterdam, the goods being carried there by internal communication: *Held* that they could not be condemned, the interior carriage of the goods from Amsterdam to Rotterdam not being within the possible scope of the blockade. *The Ocean, Parker*, 3 C. Rob. 297.; *The Stert, Johnson*, note thereto.

89. Where goods were sent by interior communication from Amsterdam (then under blockade) to Embden to be exported to London: *Held*, that it was not a breach of blockade. *The Stert, Johnson*, 4 C. Rob. 65.

90. Case of asserted breach of blockade of the Weser. The ship left Bremen, on the Weser, for the river Jade, in ballast; and having there shipped her cargo, which had been previously sent over in lighters from Bremen for the purpose of being shipped for America, under a charter-party with the ship made at Bremen, was captured whilst on her voyage to America: *Held*, that the cargo being brought through the mouth of the blockaded river, for the purpose of being shipped for exportation, would subject it to be considered as taken on a continued voyage, and as liable to all the same principles that are applied to a direct voyage, of which the terminus *a quo* and the terminus *ad quem* are precisely the same as those of the more circuitous destination, and that ship and cargo were liable, under the general law, to condemnation accordingly. *The Maria, Monses*, 6 C. Rob. 201., and *The Charlotte Sophia, Moller*, note thereto, 204.; S. P. *The Lisette, Steg*, 6 C. Rob. 394.

91. But His Majesty's permission, granted to the city of Bremen, for lighters to navigate between the rivers Jade and Weser with innocent cargoes, notwithstanding the blockade, *Held* to justify the particular trade in which the ship was engaged. Restitution of ship and cargo accordingly, on payment of captors' expenses. *Ibid.*

#### 2. *Of the effect of egress.*

92. A ship coming out of a blockaded port is, in all cases, in the first instance liable to seizure; and, to obtain a release,

the claimant must give very satisfactory proof of the innocency of his intention. *The Frederick Molke, Boysen*, 1 C. Rob. 88.

#### 3. *Egress with cargo shipped before the blockade.*

93. A neutral is no more at liberty to assist the traffic of exportation from, than of importation into, a blockaded port. The utmost that can be allowed to a neutral vessel is, that having already taken on board a cargo before the blockade begins, she may be at liberty to retire with it. But a neutral ship departing can only take away a cargo *bond fide* purchased and delivered before the commencement of the blockade: if she afterwards takes on board a cargo it is a fraudulent act and a violation of the blockade. *The Vrow Judith, Volkerts*, 1 C. Rob. 152.

94. A blockade is broken as much by coming out with a cargo as by going in, except when a cargo is shipped or delivered to the master for the use of his owner before the commencement of the blockade. *The Neptunus, Kuyp*, 1 C. Rob. 171.; *The Juno, Beard*, 2 C. Rob. 119.

95. Where a neutral has sent in goods before the blockade, which are found unsaleable, or are otherwise withdrawn *bond fide* by the owner, they are not subject to condemnation for coming out. *The Potsdam, Gerts*, 4 C. Rob. 89. n.; *The Juf-frow Maria Schröder*, note.

96. The rule permitting egress with cargo from a blockaded port, in cases only of a delivery on board the ship or in lighters before the blockade, refused to be extended to shipment in warehouses in cases in the South American trade. *The Rolla, Coffin*, 6 C. Rob. 371.

#### 4. *Egress in ballast.*

##### (a) *Where the vessel had entered before the blockade.*

97. A ship that has entered previously to the blockade may retire in ballast or take out a cargo put on board before the blockade. *The Juno, Beard*, 2 C. Rob. 119.

*See post*, No. 133.

##### (b) *After transfer between neutrals in the blockaded port.*

98. A ship transferred in a blockaded port from one neutral to another, and coming out in ballast, is not guilty of a

breach of blockade, nor is such a transfer invalid. *The Potsdam, Gerts*, 4 C. Rob. 89.

99. A vessel was sold in a blockaded port by a neutral, who had himself purchased of the enemy since the commencement of hostilities, and was taken coming out of the blockaded port. Further proof refused. Condemnation. *The Vigilantia, Reynaert*, 6 C. Rob. 122.

*See post*, Nos. 106, 107.

5. *Conveyance of neutral distressed mariners under orders of the neutral state.*

100. The employment of a ship by the minister of a neutral state resident in a belligerent country for the purpose only of conveying home distressed mariners of the neutral state from that country, *Held* to be an exception to the general prohibition as to trading with the blockaded ports of the belligerent country. *The Rose in Bloom, Olcott*, 1 Dodson, 58.

6. *Other cases.*

101. In a case of asserted breach of blockade by egress, on proof of the blockade being *de facto* only, and that the vessel had come out in sight of, but without being stopped by, the blockading squadron, and was afterwards captured by a cruiser ignorant of the blockade. Restitution: captors' expenses refused. *The Christina Margaretha, Helgesen*, 6 C. Rob. 62.

102. A vessel under the colours of a neutral state having passengers on board and laden with forty puncheons of brandy and twenty-five valuable packages from an enemy's port declared in Orders of Council to be in a state of blockade, having been captured, condemned together with cargo, excepting certain stores for the use of distressed seamen of the neutral state during their voyage home. *The Rose in Bloom, Olcott*, 1 Dodson, 57.

*See post*, No. 108.

XIV. BREACHES OF — ET CONTRA.

1. *Acts in the blockading port amounting to — et contra.*

103. The continuing to take in a cargo after the time when the party was bound to take notice of the notification of a blockade, will be sufficient to render the ship liable to condemnation. *The Calypso, Schultz*, 2 C. Rob. 298.

104. The time of shipment is very material, for although it might be hard

to refuse a neutral liberty to retire with a cargo already laden, and by that act already become neutral property, yet after the commencement of a blockade a neutral cannot be allowed to interpose in any way to assist the exportation of the property of an enemy. *The Betsey, Murphy*, 1 C. Rob. 93.

105. Compulsory sale of cargo in the blockaded port is no excuse for breach of blockade, after having gone in voluntarily. Condemnation. *The Byefield, Forster, Edwards*, 188.

106. Where a vessel has been purchased in a blockaded port, that alone is the illegal act, and it is immaterial out of what funds the purchase is made, nor can she be said not to be taken *in delicto* when, on a voyage to the country of the purchaser, she has been driven to an intermediate port by stress of weather. Condemnation. *The General Hamilton, Flinn*, 6 C. Rob. 61.

107. The purchase by the agent of a neutral state of a vessel from a belligerent state on behalf of the former owners is *stricti juris* an infraction of an Order of Council declaring the ports of such belligerent power to be in a state of blockade and a buying in a blockaded port, but the Court will view such a transaction leniently, and consider it as little more than a ransom or compromise. *The Rose in Bloom, Olcott*, 1 Dodson, 57.

*See ante*, Nos. 98, 99.

2. *Other cases.*

108. A neutral merchant vessel sailing in ballast to a port of the enemy declared to be in a state of blockade, with seventeen passengers, some neutral and some enemies, the master asserting that he carried despatches for the government of his country, condemned: *Held*, that a merchant vessel cannot set up such employment as a ground of protection for a voyage otherwise illegal, but that the neutral state only can do so. *Quære*, Has a neutral state the right of imparting such a protection to a merchant vessel engaged in a transaction otherwise illegal? *The Drummond, Langdon*, 1 Dodson, 103.

XV. BREACHES OF —

1. *When the offence is terminated — et contra.*

109. There is not such an analogy between the law of blockade and the law of

contraband that a vessel may come out of a blockaded port purged of the offence committed by going in, as in cases of contraband, for there the offence is deposited with the cargo, whereas in blockade the offence may be continued and renewed in the subsequent conduct of the ship, since the object of a blockade is to prevent all communication of commerce by egress as well as ingress. *The Frederick Molke, Boysen*, 1 C. Rob. 87.

110. If a ship that has broken a blockade is taken in any part of the same voyage, she is taken *in delicto* and subject to confiscation. The offence is not terminated until she reaches the end of the voyage. *The Welvaart van Pillaw, Bolter*, 2 C. Rob. 128.; *The Juffrow Maria Schröder, Greenwold*, 3 C. Rob. 153.

111. Where a vessel came out of a blockaded port with a cargo and on a professed destination to a neutral port, in which cases the restrictions of such blockade had been released by an Order in Council of January, 1807, but had violated the blockade by proceeding to an enemy's port: *Held*, that as it could not be known where she intended to go until she had reached that port, she must be considered subject to capture on again coming out; but that this right of capture was not to be extended beyond the subsequent voyage. *The Christiansberg, Vanderweyde*, 6 C. Rob. 376., and *Randers Bye*, 382. n.

112. The offence incurred by a breach of blockade remains during the voyage, but subject to the condition of the continuance of the blockade, the raising which does away with the offence. Ship and cargo seized after notification of the raising of a blockade, and proceeded against as for a breach thereof, decreed to be restored. *The Lisette, Steg*, 6 C. Rob. 387.  
*See antè, No. 106.*

## 2. Liability of cargo, where affected by the delinquency of the ship — et contra.

113. In blockade, in order to make the conduct of the ship affect the cargo, it is necessary either to prove that the owners were or might have been cognizant of the blockade before they sent their cargoes, or to show that the act of the master of the ship personally binds them. *The Mercurius, Gerdes*, 1 C. Rob. 84.

114. A deviation into a blockaded port being proved against the ship, it is to be presumed that she was going in to dispose

of the cargo: both condemned. *The Alexander, Ages*, 4 C. Rob. 93.

115. Where it appeared that a ship was going to a blockaded port, known to the master at the time of sailing to be in a state of blockade, it will be considered that she was going for the purpose of delivering the cargo, and both will be condemned; although where it appears that the intention of the owner of the cargo is pure, as where the voyage began before the knowledge of the blockade, and the master on being warned persists in mere personal perversity in going in, the cargo and the vessel have been distinguished. *The Adonis, Gottschalk*, 5 C. Rob. 256.

116. Owners of cargoes must answer to the country imposing the blockade for the acts of the persons employed by them where the blockade is known at the port of shipment. Cargo *held* to be involved in the fate of the ship, which was condemned for breach of blockade. *The James Cook, Jougain*, 1 Edwards, 263.

117. A ship proceeded against for a breach of the blockade of Cadiz by ingress and egress, condemned, the knowledge of the existence of the blockade having been brought home to the master. Portion of the cargo laden by the directions of the master for owners' account under the authority of a letter of instructions from the owner, which instructions stated the vessel to have been consigned to his (the master's) order, also condemned. Remainder of cargo laden for account of another neutral merchant by an agent residing in Cadiz, who appeared to act in this instance under the authority of a general order to make such returns as he should consider eligible, for goods transmitted to him from this neutral merchant in their general course of trade, restored. *The Manchester, Reynolds*, 2 Acton, 60.

## 3. Acts of agents — how far affecting their principals — owners of cargo.

118. Although, at the time of a vessel's sailing, the blockade was unknown to the owners, being in America, but they had entrusted the master and their consignees with full general powers as to the destination of vessel and cargo, *Held* that the owners must be bound by the conduct of their agents; and if a breach of blockade, of which the master had knowledge, is committed, the penalty will attach. *The Columbia, Weeks*, 1 C. Rob. 156.

119. Where a cargo was put on board

by an agent in the blockaded port, in pursuance of orders from his principal, a neutral merchant, and taken coming out, and it appeared that when the orders were given the neutral could not have known of the blockade, *Held* that it was not subject to condemnation. The rule that a principal is bound by the acts of his agent is obviously too rigid to be applied to a case where it is the interest of the agent to get the goods off, and run the risk of the capture, while the principal is wholly innocent of the risk. *The Neptunus*, *Kuyper*, 3 C. Rob. 173.; *The Adelaide*, *Bose*, 3 *Ibid.* 281.

#### 4. Exemptions from forfeiture in respect of — *et contra*.

##### (a) Treaty of free ships free goods.

120. *Quere*, How far, under the treaty with Portugal of 1654, that free ships should make free goods, that privilege can be extended to the carrying of enemy's property out of a blockaded port. This question not distinctly arising, the cargo being documented as the property of Portuguese neutral merchants, though claimed generally, and not verified in the depositions, restitution decreed, the Court declining, under the circumstances, to order further proof of the property. *The Nossa Senhora da Adjuda*, *Aranjo*, 5 C. Rob. 52.

##### (b) Licences, where exempting — *et contra*.

121. A licence authorizing a ship to sail from any port with a cargo will not authorize her to sail from a blockaded port with a cargo taken in there. A blockaded port shall be taken as an exception to the general description in the licence, unless its exemption is specially designated therein. *The Byfield*, *Forster*, 1 Edwards, 190.

122. Where, at the time of a blockade of the port of Amsterdam by the British, a neutral applied for and received from the British government a licence to go "to the ports of the Vlie," *Held* that this included Amsterdam, that being one of those ports; and although the neutral actually went through the Texel instead of the Vlie passage, and came out with a cargo, it was considered by the Court that licences ought to be favourably regarded against so harsh a right as that of blockade, and that the circumstance of alteration of route might be excused; and the licence containing no proviso prohibiting the

bringing out a cargo, the so doing, unaccompanied by fraud, *Held* to be almost an innocent misapprehension, not carrying penalty after it. Ship restored. *The Juno*, *Beard*, 2 C. Rob. 116.

*See ante*, No. 3.

##### (c) Permission and mis-information of captors.

123. In a case where the vessel sailed after a notification of blockade, but encountered a frigate of the belligerent on the way, and on inquiry the master was told by the captain of the frigate, who was ignorant of it, that Havre was not blockaded, *Held*, that although the ignorance of the neutral could not protect him, up to the time of encountering the frigate, it would be applying a strict rule too strictly to hold him guilty after having received such an answer from the belligerent's own cruiser. *The Neptunus*, *Hempel*, 2 C. Rob. 110.

124. In a case of blockade, permission by a former captor to a vessel to proceed on her voyage under an ignorance of the law, *Held*, not to affect a subsequent capture. Where there has been a misinformation as to the fact, it may have a different effect; but the neutral is bound to know the law, and cannot allege that he has been ill instructed therein by a belligerent cruiser. *The Comet*, *Miz*, 1 Edwards, 34.

125. Permission given to the master by a commander of a British cruiser to proceed to an interdicted port, to which the ship was at that time proceeding by the direction of the owners, *Held*, not to amount to a protection barring the operation of the Order in Council prohibiting such a voyage. Ship and cargo condemned. *The Courier*, *Erick*, *Ibid.* 249.

##### (d) On grounds of necessity and distress.

126. Nothing but an absolute and unavoidable necessity will justify breach of blockade: sufficient necessity not having been shown, ship condemned for attempt to enter a blockaded port. *The Hurtige Hane*, *Dahl*, 2 C. Rob. 124.

127. An excuse, to be admissible, must show an imperative overruling compulsion to enter the particular port under blockade, which can scarcely be said in any instance of mere want of provisions. Unfavourable winds may be an excuse claiming greater attention. Evidence admitted to be introduced on the latter point, and ultimately



restitution decreed on that ground. *The Fortuna, Rhode*, 5 C. Rob. 27.

128. Plea of distress set up as an excuse for putting into a prohibited port, *Held* not to be supported by the evidence, and overruled accordingly. *The Christiansberg, Vanderweyde*, 6 C. Rob. 378.

129. Excuse of distress set up as a justification for entering a blockaded port admitted, the deviation into such a port having been proved to have been necessary under the circumstances. Restitution. *The Charlotta, Elliot*, 1 Edwards, 252.

130. Ship and cargo condemned for breach of blockade, excuse of distress set up being *held* not proved, and insufficient if it had been proved. *The Elizabeth, Nowell*, 1 Edwards, 198.

(e) *Other excuses.*

131. It is no excuse for breach of blockade by egress that the cargo was intended to be brought to this country. *The Byfield, Forster*, 1 Edwards, 189.

132. A neutral is not justified in violating a blockade under an apprehension, whether well or ill founded, of seizure of his property by the enemy. He is to rely on his neutrality, and to look to his own government for protection. *The Wasserhundt, Lorentzen*, 1 Dodson, 272. n.

133. A neutral ship coming out of a blockaded port in consequence of a rumour that hostilities were likely to take place between the enemy and the country to which the vessel belongs, laden with a cargo, the regulations of the enemy not permitting a departure in ballast, *Held* not to be liable to condemnation, and decreed to be restored. The cargo condemned, though put on board against the will of the master. *The Drie Vrienden, Cassens*, 1 Dodson, 269.

5. *When captors may seize for —*

134. If the master, on being warned off, declares or exhibits an intention of going in, the captors are not bound to wait till he puts that intention into execution, but he may be taken as for a breach of the blockade. Condemnation. *The Apollo, Karstadt*, 5 C. Rob. 286.

6. *Practice in suits for —*

135. On a question of blockade three things must be proved : first, the existence of an actual blockade ; secondly, the knowledge of the party ; and thirdly, some act of violation, either by going in or by coming out with a cargo laden after the commencement of the blockade. *The Betsey, Murphy*, 1 C. Rob. 93.

BONDS.

1. By 5 G. 4. c. 113. s. 39. (abolishing the slave trade) all bonds, mortgages, or other securities given in contravention of that act, are void.

2. The expressions in bonds to answer latent demands do not refer to claims (not prosecuted) of the same character as those of the party giving bail, but rather to original interests in the subject matter, as title to the ship, &c. ; the nature and character of such instruments considered. *The Saracen*, 10 Jur. 397.

3. A mortgagee is not entitled to arrest

a vessel for the purpose of enforcing bail for her safe return to this country. Motion on behalf of a mortgagee for such purpose rejected. *The Highlander, Rendles*, 2 W. Rob. 109.

See BAIL.

*Bottomry and Respondentia Bonds* — see BOTTOMRY.

*Bonds by major part-owners to dissentient minor part-owners for the safe return of ships* — see OWNERS.

## BOTTOMRY.\*

- I. GENERAL CONSIDERATIONS WITH REFERENCE TO—, 51.
- II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO—, 52.
- III. OF THE JURISDICTION OF COURTS OF EQUITY WITH REFERENCE TO—, 53.
  1. Generally, 53.
  2. To restrain proceedings thereon in the High Court of Admiralty, 54.
- IV. WHAT VESSELS MAY BE THE SUBJECT OF —ET CONTRA, 54.
- V. ON FOREIGN SHIPS ENGAGED IN VOYAGES TO AND FROM THE EAST INDIES, 54.
  1. Statutory regulations with regard to—, 54.
- VI. WHO MAY HYPOTHECATE, 55.
  1. Owners and part-owners, 55.
  2. Masters (original and substituted), 55.
    - (a) Under what limitations, 56.
  3. Other parties, 57.
- VII. WHEN HYPOTHECATION MAY TAKE PLACE —ET CONTRA, 57.
- VIII. WHERE HYPOTHECATION MAY TAKE PLACE—ET CONTRA, 57.
- IX. OF THE DUTIES OF THE MASTER BEFORE HYPOTHECATION, 58.
- X. WHAT INSTRUMENTS ARE TO BE CONSIDERED AS—ET CONTRA, 58.
- XI. OF THE CONSTRUCTION OF—, 59.
  1. Generally, 59.
  2. As expressing or implying maritime risk—et contra, 60.
  3. As to the commencement of the risk, 60.
  4. With reference to capture, 60.
- XII. OF LENDERS ON—, 60.
  1. Who may be—et contra, 60.
  2. Of the bondholder's title, 61.
  3. Of the rights of—, 61.
  4. Of the duties of—, 62.
  5. Of the liabilities and risks incurred by—, 62.
  6. Of insurances by bondholders on bottomry loans, 62.
- XIII. WHO MAY IMPUGN—, 63.
- XIV. REQUISITES TO THE VALIDITY OF—ET CONTRA, 63.
  1. Necessity for—, 63.
  2. Maritime risk, 63.
  3. Maritime interest, 64.
- XV. OF THE VALIDITY OF—ET CONTRA, 64.
  1. For what supplies bottomry may be had recourse to—et contra, 64.
  2. With reference to the voyage, and the owner's cognizance and approval thereof, 65.
3. Given under duress, 65.
4. On the ground of a sufficient necessity, 66.
  - (a) Where proved, 66. "
  - (b) Where not proved, 66. †
5. Where the advances were made in contemplation of bottomry—et contra, 67.
6. Where the advances might have been obtained on personal credit, 67.
7. For advances made on personal credit, 68.
  - (a) Of the effect thereof, 68.
  - (b) Of the effect of a right of lien on the ship for such advances, 68.
  - (c) Where proved, 68.
  - (d) Where not proved, 68.
8. Where given as collateral securities, 69.
9. Where bills of exchange are taken as collateral securities, 69.
10. Where good in part and bad in part, 69.
11. Other circumstances affecting,—et contra, 69.
- XVI. OF DEVIATIONS FROM THE VOYAGE DESCRIBED IN—, 70.
- XVII. ON CARGO, 70.
  1. Of the right to hypothecate, 71.
    - (a) Authority of principal as binding remaining owners, 71.
  2. Of the bondholders' rights against—, 71.
- XVIII. OF THE PAYMENT OF—, 71.
  1. When due—et contra, 71.
  2. Of the personal responsibility of the owners and master for—, 72.
  3. Of the relative liability and contribution of ship, freight, and cargo to—, 72.
  4. Of the precedence of bottomry bonds over other claims, 74.
  5. Of the precedence of later over prior dated bonds, 75.
  6. Miscellaneous, 76.
- XIX. OF THE ACCOUNTS ON—, 76.
  1. Of the reference thereof to registrar and merchants, 76.
  2. Charges therein allowed—76.
  3. Of the allowance of premiums in—, 77.
  4. Of the allowance of interest on—, 78.

\* 1. Bottomry, or *Bottomary*, is when the master of a ship borrows money upon the keel or bottom of his ship, and binds the ship itself that if the money be not paid by the day assigned, the creditor shall have the ship. *Ceo bottomage est*

*quand argent est borrow sur keil del neif et le neif oblige al payment de ceo, viz. si ne soit pay al temps que l'auter avera le neif.* Latch's Rep. fol. 252; Cunningham's Law Dict.

XX. PRACTICE IN SUITS ON —, 78.

1. *As to the institution of proceedings before the bond is due*, 78.
2. *Of the limitation as to time in the institution of proceedings*, 79.

3. *As to proceedings in* —, 79.

4. *Of the proof of* —, 79.

5. *Miscellanea*, 80.

XXI. COSTS IN CAUSES OF —, 80.

I. GENERAL CONSIDERATIONS WITH REFERENCE TO — \*

1. Bottomry bonds are entitled to very favourable considerations, and they have always been upheld by the Court of Admiralty with a very high hand. *The Rhadamanthe*, *Mayer*, 1 Dodson, 203.; *The Alexander*, *Tate*, *Ibid.* 279.; *The Augusta De Bluhn*, *Ibid.* 287.; *The Hero*, *Howard*, 2 Dodson, 142.

2. Bottomry bonds are contracts in the nature of mortgages of a ship, on which the owner borrows money for a voyage proposed, and pledges the keel or bottom of the ship, *pars pro toto*, as a security for repayment; and it is stipulated therein that if the ship be lost in the course of the voyage by any of the perils enumerated in the contract, the lender shall lose his money. *The Atlas*, *Clark*, 2 Hagg. 53.

3. Bottomry bonds, where given *bonâ fide*, and for legitimate purposes, are to be liberally protected. It is important for the interests of commerce that a master in a foreign port, in need of assistance and without credit, should have a power of hypothecation of the vessel; but it is also highly necessary, for the protection of ship-owners, that the master's power in that respect should be limited by the necessity of the case. The transaction should be carefully watched. *The Reliance*, *Hayes*, 3 Hagg. 74.

4. Where money is borrowed on bottomry for necessary purposes during the course of a voyage, and where there was no other credit, the Court is disposed to go far in upholding such bond. The giving such bond is the act of the master, the agent of the owners, and is not to be slightly vitiated. Bottomry bonds are not

to be invalidated unless fraud or collusion be proved, or that other credit existed, or that the money was raised for other purposes than necessary repairs and expenses. *The Calypso*, *Phalp*, 3 Hagg. 163. 165.

5. Bottomry bonds are the creatures of necessity and distress, and may be expected, therefore, to assume different shapes, which cannot be limited except by the condition of a faithful and beneficial discharge of the authority exercised in granting them as being necessary for the preservation of property: they are favoured instruments. *The Kennersley Castle*, 3 Hagg. 7.

6. It is highly for the interests of commerce to sustain the credit of bottomry bonds where the transactions are fair and liberal. The foreign lender is entitled to the best security. *The St. Catherine*, *Sinclair*, 3 Hagg. 254.

7. The state of commerce may become such as to induce the Court to be even more liberal than hitherto in its view of bottomry bonds. It is not consistent with their character to bind them down by technical rules. *The Kennersley Castle*, 3 Hagg. 8.

8. Bottomry bonds are, for the benefit of the ship-owners and the general advantages of commerce, greatly favoured in Courts of Admiralty, and where there is no suspicion of fraud, every fair presumption is to be made to support them. *Smith v. Gould and others (The Prince George)*, 4 Moore, 28., 6 Jur. 543.

9. The meaning of the dictum that bottomry bonds are of a high and sacred character is, that where the transaction is once proved to have been clearly of a bottomry character, *i. e.* where the distress, want of personal credit, and that the bond is in all

\* 2. Where money is actually wanted for the repair of a vessel in a foreign port, the master being without credit, and there has been no extortion, it is for the interests of commerce that bottomry bonds in such cases should be strongly upheld, and it is the duty of the Court so to uphold them. Bottomry bond in such a case, accompanied by bills of exchange for the same amount, pronounced for with costs. *The St. Catherine*, 1 Notes of Cases, 502. n.

3. There is no settled form of contract in use with regard to bottomry bonds given by the master in a foreign country. Sometimes an instrument in the form of a bond, at others in the form of a bill

of sale, at others of a different shape, is made use of. But whatever the form, the occasion of borrowing the sum, the premium, the ship, the voyage, the risks to be borne by the lender, and the subjection of the ship itself as security for the payment, all usually are, and properly ought to be, expressed. It is absolutely necessary that the liability of the lender to the sea risks should appear or be fairly collected from the instrument, otherwise the reservation of maritime interest will render the security void on the ground of usury, not only as a charge upon the ship, but also against the person of the borrower. *Abb. Sh.* 158.

essentials apparently correct, are admitted or established, it shall not be impugned, save where there shall be clear evidence of fraud, or where it shall be proved beyond doubt that the money was, in fact, advanced on different considerations. *The Vibilia, Richards*, 1 W. Rob. 5.

10. The principle of bottomry has been, is, always will, must, and ought to be, the same, *viz.* to assist the necessities of navigation, and afford facility to the exigencies of commerce. *The Mary Ann*, 10 Jur. 255.

11. A bottomry bond is a negotiable instrument, which may be transferred and put in suit by the person so acquiring it. *The Rebecca, Maddick*, 5 C. Rob. 102.

12. The Court discountenances the sale of bottomry bonds. *The Prince of Saxe Cobourg, Ladd*, 3 Hagg. 394.

13. A contract of hypothecation is not assignable, being a chose in action. *Marshall v. Wilson*, Abb. Sh. 148. (Ellenborough.)

14. Bottomry is not within the statute of usury, because a real risk is run.\* *Chesterfield v. Janssen*, 2 Ves. 143.

15. Bottomry bonds may be so contrived as to be construed an invasion of the statute against usury, as well as any other contract. *Ibid.*

16. By 5 G. 4. c. 113. s. 39. (abolishing the slave trade) all bonds, mortgages, and other securities, given in contravention of that act, are void.

17. In a cause of bottomry the Court will not hold itself bound by the custom of a foreign port, unless such custom be reasonable and just. *The Cognac, Even*, 2 Hagg. 392.

*See post*, Nos. 37. 240. 245, 246, 247.

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY WITH REFERENCE TO — †

18. The master had hypothecated a ship for necessaries, being upon the sea in stress of weather. Prohibition was moved for on the ground that the agreement was made, and the money lent upon the land, *viz.* in the port of London; but, *Held*, that this must necessarily be so, for if a man be in distress upon the sea and compelled to go into port, he must receive the money there; and if his ship be impaired by tempest, so that he is forced to borrow money to prevent her being lost, and pledges his ship for security, since the cause of the pledging arises upon the sea, the suit may well be in the Admiralty Court. *Benzen v. Jeffries*, (1695), Ld. Raym. 152., 6 Viner's Abr. 529. And no action can be brought on the 2 H. 4. c. 11. for suing there on such bond. *Ibid.*

19. Where a master pawns a ship at sea, the Admiralty has jurisdiction, and the master may so pawn to relieve the ship in extremity; for he being constituted master of the ship, has impliedly a power to preserve it in case of danger; but he cannot pawn it for his own debt, because he has neither a property nor power for that purpose; and if the Admiralty shall confirm an hypothecation of that nature, a prohibition shall be granted. *Rex v. Perry* (1688), 3 Salk. 23.

20. The Court of Admiralty has jurisdiction with reference to an hypothecation bond given in the course of a voyage, though it be executed on land and under seal. *Menetone v. Gibbons* (29 G. 3.), 3 T. R. 267.

21. Where the Court of Admiralty has given a sentence, it shall be taken that they

\* This statute is now repealed by 2 & 3 Vict. c. 37.

† 4. The legality of proceedings in the Court of Admiralty in cases of hypothecation by the master in a foreign country, which Court is so constituted as to be calculated to administer justice in a manner that cannot be effected by the Courts at Westminster Hall, has been recognised by those Courts in a variety of cases, and is now fully established. *Bridgman's case*, Hob. 11., Moor, 918., 1 Ro. Ab. 530.; *Scarborough v. Lyrius* (3 Car. 1.), Latch. 252., Nov. 95.; *Corset v. Hurly* (1 W. & M.), Comb. 131. Rep. temp. Holt, 48.; *Johnson v. Shippen*, (2 Anne), 2 Ld. Raym. 982., Salk. 35., 6 Mod. 99., Rep. temp. Holt, 48.; *Lister v. Baxter*, (12 Geo. 1.), Stra. 693., and see Abb. Sh. 163.

5. The Admiralty shall have jurisdiction upon contracts made *super altum mare*. *R. Cro. Car.* 296. And if the contract be good by the law of

the Admiralty, a libel may be there upon it, though the contract be not allowed by the common law, as if the master of a ship hypothecate the ship for tackle or victuals without the assent of the owner. *R. 1 Rol.* 530. *L.* 35., *Hob.* 11, 12.

6. The Admiralty has jurisdiction if the suit be there upon an express hypothecation of the ship for tackle in *partibus transmarinis*. *R. 1 Sal.* 34, 35., *Dub.* 3 *Mod.* 244., *Acc. Mo.* 918., *Hob.* 12., 1 *Com. Dig.* 274.

7. But if the master contract without an express hypothecation, it shall not be allowed to be sued by the law marine. 1 *Sal.* 34.

8. The Admiralty Court of the United States will entertain jurisdiction *in rem*, to enforce a bottomry bond executed in a foreign country, between subjects of a foreign country, when the ship is without the territory of the United States. *The Jerusalem*, 2 Gallison's (AMERICAN) Rep. 191.

had jurisdiction unless the contrary appear on the face of it; therefore, if the owner of a ship charge her for repairs done in England by an instrument under seal, stated to be by way of bottomry, upon which she is afterwards seized by Admiralty process and decreed to be sold to satisfy the demand, and no appeal is made from that sentence, but between the seizure and the decree a writ of execution issues against the owner at the suit of another creditor, the sheriff cannot take the vessel under this writ, nor can he maintain trover against the officer in possession by the warrant of the Court of Admiralty. *Ladbroke v. Crickett*, 2 T. R. 649.; and see *Buggin v. Bennett*, 4 Burr. 2035.; S. P. *Blacquiére v. Hawkins*, 1 Dougl. 378.

22. The jurisdiction of the Admiralty Court over the subject-matter of bottomry bonds has been allowed by the common law courts. Extent of such jurisdiction incidentally considered. *The Rhadamanthe, Mayer*, 1 Dodson, 203.

23. The Court of Admiralty has certainly an established jurisdiction over bottomry bonds properly so called; such bonds are founded upon sea risk, and are defeasible by the destruction of the ship in the course of her voyage, on which account alone the high interest is allowed and supported by the established course of this maritime jurisdiction. *The Atlas, Clark*, 2 Hagg. 52. 54.

24. The Court of Admiralty, if required to enforce bottomry contracts, must proceed on principles of equity. *The Cognac, Ewen*, 2 Hagg. 389.

25. *Semble*, that the Admiralty Court has jurisdiction to entertain a bottomry suit where an agreement for bottomry has been entered into, but no bond actually given. *The Aline, Stockebye*, 1 W. Rob. 122.

26. *Semble*, that the Admiralty Court has jurisdiction to entertain a bottomry suit where the bond has been granted but the ship has never put to sea. *Ibid.* 121.

27. *Quere*, how far a bottomry bond given by the master in port, prior to the commencement of a voyage, is recoverable by proceedings in the Court of Admiralty. In such a case the ship having been arrested at the suit of the bondholder, the Court on motion for *primum decretum*, de-

cree of appraisement and perishable monition, signed and decreed the same, but expressly on the ground that the owners had had notice of the application, and no objection had been taken on their behalf. *The Jenny, Bowack*, 2 W. Rob. 5.\*

28. The Court of Admiralty cannot, unless fraud is shown, interfere with the master's right to take up a second bottomry bond, or prevent him from using his utmost exertions for the completion of his voyage. *The Armadillo, Benedict*, 1 W. Rob. 265., 1 Notes of Cases, 75.

29. By the Admiralty law, where the master cannot obtain funds on a pledge of the ship, he has power to bind the cargo for the repairs necessary to effect the prosecution of the voyage. Such is the general principle, and such has been uniformly the practice of the Court, and no prohibition in such a case is known to have issued. A bond so given pronounced for in that Court. *The Gratitude, Mazzola*, 3 C. Rob. 240.

30. By 3 & 4 Vict. c. 65. s. 4. the High Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry.

*See post*, Nos. 36. 65. 106. 203.

### III. OF THE JURISDICTION OF COURTS OF EQUITY WITH REFERENCE TO —

#### 1. Generally.

31. The Court of Chancery possesses and will exercise jurisdiction over a bottomry bond in a case of fraud. Injunction granted accordingly to restrain proceedings upon such a bond in the Admiralty Court, where proceedings had been commenced after the institution of proceedings in the Court of Chancery. *Glascott v. Lang*, 3 Myl. & Craig, 454., 8 Sim. 358., 2 Jur. 909.; and *Dobson v. Lyall*, therein cited.

32. It is not necessary for the purpose of such an injunction, that the Court of Chancery should find such a case disclosed as would entitle the plaintiff to relief at all events. It is sufficient if the Court finds

\* 9. With regard to contracts of bottomry made by the owners themselves in this country before the beginning of a voyage, by the terms of which the ship is pledged as a security, the lender has no

remedy in the Court of Admiralty against the ship, as he has in the case of hypothecation for necessities by the master in a foreign port. *Abb.* Sh. 151. 153.

on the evidence then before it a case which makes the transaction a proper subject of investigation in a court of equity. *Ibid.*

33. After long acquiescence under such an order, the Court will not readily entertain an application for dissolving it. *Ibid.*

34. A part-owner of a ship borrowed money on a bottomry bond, payable on the return of the ship from a voyage in which she was then engaged in the service of the East India Company, who broke her up in the East Indies. Damages in respect thereof having been recovered by the owners against the Company, the bondholder brought his bill in equity to have his proportionable satisfaction out of such damages; but his bill was dismissed on the ground that a court of equity will never assist a bottomry bond which carries unreasonable interest. *Dandy v. Turner*, Eq. Cas. Abr. 372., 2 Park on Ins. 887.\*

35. A bottomry bond was given on the ship S. The conditions thereof were, that if the said ship bound for the East Indies should return to London within thirty-six months, or should not return within thirty-six months, not being taken or lost by inevitable accident within that time, then the money should be paid, &c. The ship was detained in the port of Surat, in India, by embargo of the Great Mogul, so that she could not sail from Surat until after the thirty-six months had elapsed; and on her return home was taken by the French, but being after the thirty-six months the bond was not forfeited: there being, however, no fault in the master, and the delay in the voyage having been occasioned by inevitable accident (viz. the embargo), the owner filed his bill in Chancery, praying to be relieved against the penalty of the bond. The Court held that it could not relieve in such a case against the express agreement of the parties, but that if the defendant had insured the money on the ship, the plaintiff should have the benefit of the insurance, on allowing the defendant the charges of insurance, if the plaintiff paid the money within three months. Bill dismissed without costs. *M. S. Rep. Pasch.*

12 Ann. in Canc. *Ingledeu v. Foster*, 4 Vinier's Abr. 281.

*See post*, Nos. 100, 101, 102.

## 2. To restrain proceedings in the High Court of Admiralty thereon.

36. Injunction granted to restrain proceedings in the Admiralty Court on a bottomry bond, on the ground that the matters could be more effectually determined in the Court of Chancery, the proceedings taken in the Court of Admiralty, in opposition to the bond, having been initiatory merely, fraud being charged rendering it necessary to have a full discovery from the parties, and there being equities the determination of which could be satisfactorily secured in the Court of Chancery only, the owners (the vessel being insured beyond her value) not having appeared to the suit in the Court of Admiralty, but having permitted the vessel to be proceeded against and sold there. *Duncan v. M<sup>c</sup>Calmont*, 3 Beav. 409., Abb. Sh. 163.

## IV. WHAT VESSELS MAY BE THE SUBJECT OF — ET CONTRA.

37. A hired transport in the service of Government may be the subject of bottomry as well as any other vessel; and the hypothecation of such hired transport is valid, though the particular voyage on which she was bound should not be stated in the bond. *The Jane, Birkley*, 1 Dodson, 461.

## V. ON FOREIGN SHIPS ENGAGED IN VOYAGES TO AND FROM THE EAST INDIES.

### 1. Statutory regulations with regard to—

38. By 7 G. 1. c. 21. s. 2. all contracts and agreements whatsoever made by any of his Majesty's subjects, or any person in trust for them, for or upon the loan of any monies, by way of bottomry, on any ship in the service of foreigners, and bound or designed to trade in the East Indies, or parts therein mentioned, are declared void.†

39. By 19 G. 2. c. 37. s. 5. all money to

\* 10. This case conveys a very unmerited censure upon bottomry bonds not at all warranted by the long chain of uniform decisions in their favour. From the very nature of the contract, they are to carry naval interest, which is always greater than land interest, in proportion as the risks run by the lender on bottomry are much greater than those which a lender on common bonds incurs. 2 Park on Ins. 887.

† 11. This act (7 Geo. 1. c. 21.), it should seem, does not mean to prevent British subjects from lending money on bottomry on foreign ships trading from their own country to their settlements in the East Indies. The purpose of the statute was only to prevent British subjects from trading to the British settlements in India under foreign commissions, and to encourage the lawful trade thereto. 2 Park on Ins. 871.

be lent on bottomry or at respondentia on any ship belonging to any of his Majesty's subjects bound to or from the East Indies, shall be lent only on the ship or on the effects on board, and shall be so expressed in the condition of the bond; and the benefit of salvage shall be allowed to the lender, his agents or assigns, who alone shall have a right to make assuance on the money so lent; and no borrower on bottomry or at respondentia shall recover more on any insurance than the value of his interest in the ship or in the effects on board, exclusive of the money so borrowed; and in case it appear that the value of his share in the ship or effects does not amount to the sum he has borrowed, he shall be responsible to the lender for so much thereof as he has not laid out on the ship or merchandizes laden therein, with interest, together with the assurance and all other charges thereon, in the proportion the money not laid out bears to the whole money lent, notwithstanding the ship and merchandizes be totally lost.

## VI. WHO MAY HYPOTHECATE.

### 1. Owners and part-owners.\*

40. A bottomry bond, given by the owner on board, and exercising authority in the ship, the master refusing to sign the bond, though receiving the supplies for which the ship was hypothecated, pronounced for, and *Held* to be entitled to priority of payment over a prior mortgage of the vessel by such owner. *The Duke of Bedford, Morris*, 2 Hagg. 295.

See *antè*, note 9, and *post*, Nos. 62. 132. 134.

\* 12. The powers of owners of vessels is unrestricted by the limited rules as to hypothecation applicable to masters. They necessarily possess, inherent on their ownership, the right of pledging or mortgaging their vessels, and the mode usually resorted to for this purpose is by what are termed bottomry or respondentia bonds. *Cross on Liens*, 298.

13. It is not necessary to the validity of a bottomry bond made by the owner of a vessel, that the money should be advanced for the necessities of the ship, or for the cargo, or for the voyage. Where it is given by the owner as *dominus navis*, he may employ the money as he pleases; where it is given by the master, *virtute officii*, it must, in order to have validity, be for the ship's necessities; for the implied authority of the master extends no farther. *The Draco*, 2 Sumner's (AMERICAN) Rep. 157.

14. The master can only pledge the vessel in case of necessity; the owner may pledge for money

### 2. Masters original and substituted. †

41. The master, so long as he remains the ostensible master, has a right to hypothecate the ship. *The Jane, Birkley*, 1 Dodson, 464.

42. A master, who is also part-owner, has not, and certainly not over other part-owners, a greater power than a mere master to hypothecate the ship. *The Orelia, Hudson*, 3 Hagg. 85.

43. A person at the time, and for two months previously, acting as master, might, in that capacity, legally hypothecate the ship, though not registered as master. *Ibid*.

44. If the master, factor, purser, or he that is reputed owner of the ship, borrow money on bottomry for the necessities of the ship, such an act binds the owner, although the money be not so employed, the owner having his remedy against the borrower whom he so put in trust. *Scarborough v. Lyrius*, Noy, 95., 14 Viner's Abr. 329.

45. Bottomry bonds may be given by masters substituted and appointed abroad, and by masters by succession, such a master being the *hæres necessarius*, as he is called. A vessel having had a succession of masters (owing to a mortality which prevailed in the West Indies) who were appointed, under various circumstances, in different islands, and by the agents or consignees, some of such masters gave bottomry bonds for repairs done not only by their own order, but by the directions of their predecessors. Such bonds pronounced for, there being nothing to impeach the integrity of the whole transaction. *The Kennersley Castle*, 3 Hagg. 8.

to purchase a cargo. *The Mary*, 1 Paine's (AMERICAN) Rep. 671.

15. As the master of a ship may, under certain circumstances, pledge the ship by a bottomry contract, so also may the owners or part-owners in any case to the extent of their respective interests. *Abb. Sh.* 151.

† 16. The power of the master to hypothecate the ship in a foreign country for repairs, &c., is by the law marine impliedly given him in the very act of constituting him master. 2 *Park on Ins.* 873.

17. Where a ship in a foreign port is in want of supplies and repairs which are reasonably fit and proper, the master, if he has not suitable funds, or cannot obtain money on the personal credit of the owner, may take it upon bottomry. *The ship Fortitude*, per Story J., Circuit Court of the United States at Boston, May term, 1838, Curtis's (AMERICAN) Adm. Dig. 92.

46. In a case of bottomry, where the abstract title of ownership was in abeyance, a litigation being pending between the owner, who had abandoned the ship as a total loss, and the underwriters, the Court would look with great indulgence on the acts of the underwriters, as having, after the owner, all the interests of ownership, the most equitable right to interfere, and acting for the benefit of all resulting interests. It would be very much disposed to support a bottomry bond given by a master substituted by the underwriters, the master having left the vessel. *Ibid.*

47. A vessel, on her homeward voyage, having met with an accident and put into a foreign port, her owner gave notice of abandonment to the underwriters as for a total loss. The master having left her for England, a bond given by a substituted master (it being questionable whether he was appointed by the agent of the underwriters or a constructive agent of the owner, or both) to the constructive agent of the owner, a question as to the insurance being pending between the owner and the underwriters, leaving the abstract title of ownership in abeyance, pronounced for; the transaction being unimpeachable, and the personal credit of the underwriters, upon which partially the advances were made, being *Held* to have been taken as a collateral security only, not changing the character of the transaction. Application for costs against the assignee of the owner personally, the proceeds not being sufficient to cover them, refused. *Ibid.*

48. A bottomry bond given by a master (substituted on the death of the former master) to the merchant who had appointed him, for advances for proper supplies to the ship, pronounced for, notwithstanding a stipulation in the charterparty that the disbursements for the ship should be made free of commission by the charterer's agent,

who was not named, the bondholder not having seen the charterparty, or had any knowledge of such clauses, or being the agent of the charterer. *The Rubicon*, 3 Hagg. 9.

*See post*, No. 87.

(a) *Under what limitations.\**

49. If the master pledge the ship by hypothecation *super alium mare*, for tackle and stores without the assent of the owner, it is allowed that this shall bind the owner by the Admiral Law, on account of the necessity, and the Common Law ought to take notice thereof. *Barnard v. Bridgman* (12 Jac.), Hob. Rep. 17. But *aliter*, if the master had so pledged the ship for his own debts. 6 Viner's Abr. 517.

50. The master may hypothecate the ship for the supply of necessaries in foreign ports. *Menetone v. Gibbons*, 3 T. R. 207., Dougl. 103.†

51. Bottomry bonds can be resorted to only where there is a failure of personal security, in order to enable the master to supply himself in a foreign port with necessaries which he would otherwise be unable to procure. They spring from and are supported by the Court on the ground only of such necessity. *The Augusta, De Bluhn*, 1 Dodson, 286.; *The Nelson, Brown*, 1 Hagg. 175.

52. A master is only authorized in strictness of law to take up money on bottomry when he has no funds or credit. He can only hypothecate the ship for an unprovided necessity. *The Reliance, Hayes*, 3 Hagg. 68.

53. The right of the master to take up money on bottomry is *stricti juris* arising out of unforeseen necessity, and only to be exercised for the general interest of all parties in the protection and preservation

\* 18. With regard to the raising money on bottomry in a foreign country, the rule appears to be that if the master of a vessel has occasion for money to repair or victual his ship, or for any other purpose necessary to enable him to complete the enterprise in which she is engaged, whether the occasion arises from any extraordinary peril or misfortune, or from the ordinary course of the adventure, he may, if he cannot otherwise obtain it, borrow money on bottomry at maritime interest, and pledge the ship and freight to be earned in the voyage, for repayment at the termination of the voyage. *Abb. Sh.* 156.

19. A bottomry bond, to be valid, must be given by the master acting within the scope of his au-

thority. Where it is given to aid him to carry on schemes and speculations of his own, it will be void. 2 *Park on Ins.* 879.

† 20. If the master hypothecate the ship for money not taken for the tackle, victuals, &c., of the ship, it shall not be allowed. *R. Mo.* 918., *Hob.* 12.

21. It is no objection that the owner had funds in the hands of his consignees at the same port, provided the master applied for and could not obtain them; the non-existence of funds, and the non-ability to get at them, must be deemed precisely equal predicaments of distress. *The Virgin*, 8 Peters' (AMERICAN) Rep. 538.



of the ship and cargo. 1stly, This necessity must arise in the course of and for the purpose of continuing the voyage. 2dly, It must be generally, at least, in a foreign port where repairs and supplies have become necessary. 3dly, The master's power of borrowing on bottomry must arise on account of his having no other credit or means of obtaining money on the credit of the property. There must be a strong necessity. *The Prince of Saxe Cobourg, Ladd*, 3 Hagg. 392.

54. Hypothecation by the master to be valid must be bottomed on a two-fold necessity: 1stly, A necessity of obtaining supplies in order to prosecute the voyage; and, 2dly, the impossibility of obtaining those supplies in any other way than by bottomry. *The Hersey, Grimwood*, 3 Hagg. 408.; *Soares v. Rahn*, 3 Moore, 1.; *Gore v. Gardiner*, *Ibid.* 79.

55. A master has only power to bind the ship by bottomry for repairs and supplies becoming necessary for the exigencies of the voyage; and the Court acts with great strictness in not extending the privilege of bottomry against the ship beyond these limits. *The Boddingtons, Noyes*, 2 Hagg. 426.

56. *Semble*, That the master cannot hypothecate the ship for a demand in respect of which he himself is liable to be arrested in a foreign country. *Smith v. Gould and others (The Prince George)*, 4 Moore, 28., 6 Jur. 543.

57. Nor for a personal debt of his own. *Dobson v. Lyall*, 8 Jur. 969., 2 Park on *Ins.* 873., *Abb. Sh.* 160.

*See antè*, Nos. 3, 4. 9. and note 2.; Nos. 19. 28. and notes 13. 14. 16. and 17.; and *post*, Nos. 60. to 65. and notes; Nos. 111. to 121. and

*notes*; Nos. 122. to 124. and *notes*; No. 129.

### 3. Other parties.

58. In case of a capture and recapture, the mate, in the absence of the captain, has a right to hypothecate the ship for the purpose of paying the salvage to the recaptors. *Parmeter v. Todhunter*, 1 Camp. 541.

*See antè*, No. 44., and *post*, No. 134.

## VII. WHEN HYPOTHECATION MAY TAKE PLACE — ET CONTRA.

59. The master may hypothecate the ship during the voyage, but not before it begins. *Lester v. Baxter* (12 G.), Str. 695., 1 Com. Dig. 271.

*See antè*, Nos. 26, 27., and note 9.

## VIII. WHERE HYPOTHECATION MAY TAKE PLACE — ET CONTRA.\*

60. The master has a right to hypothecate the ship and cargo, though lying in a port of the same country in which the owners reside, provided he has no means of communicating with the owners. Bond given under such circumstances pronounced for. *La Ysabel, Bozo*, 1 Dodson, 273.

61. The ports of Ireland held prior to the Union to be considered for some purposes as foreign ports, for the purposes of hypothecation *inter alia*. *Quære*, how far can such rule be affected by the act of Union? *The Rhadamanthe, Mayer*, 1 Dodson, 204., *Abb. Sh.* 155.

62. Where the owner, who was also master, resident in London, made a bottomry bond in Jersey, in order to get the ship home. *Semble*, that Jersey is to

\* 22. The master of a ship is by the maritime law of all states precluded from raising money on bottomry, without their consent, in the place of the owner's residence, where they may exercise their own judgment on the propriety of borrowing the money in such manner. The whole of England is considered for this purpose as the residence of an Englishman, at least before the commencement of a voyage. *Abb. Sh.* 155.

23. The right of the master to hypothecate for repairs and necessaries does not extend to any port *infra corpus comitatús*, or where the contract for repairs, &c. is in England, though it has been held to be exercisable within a port in Ireland, and Jersey and Guernsey have also been held to be foreign countries for this purpose. *Cross on Liens*, 294.

24. The master cannot hypothecate the ship in the place where his owners reside, and it is to be inferred from the laws of Oleron and of the Hanse Towns, and from the cases determined at common law, that the ship should be abroad as well as in a state of necessity to justify the master in taking money on bottomry. If, however, the owners do not agree in sending the ship to sea, the majority shall carry it, and then money may be taken up by the master on bottomry for their proportion who refuse, although they reside on the spot, and it shall bind them all. 2 Park on *Ins.* 873.

25. The law looks more to the difficulty of communication between the master and the owner than to the locality of the transaction, in determining the validity of a bottomry bond. *Ibid.* 877.

1/ in the same port as Wm of Argo. Cannot hypothecate  
 cargo upon express personal notice to him - adverse.  
 58 merely known cannot BOTTOMRY. and not the - jurist  
 1883 - p 263

be considered, for the purpose of sustaining the bond, as a foreign port, and a warrant was accordingly granted to arrest the ship. *The Barbara, Chegwin*, 4 C. Rob. 1.

63. Advances made to the master for the repairs and service of a British ship in the port of Cowes, the owners being resident at Newcastle, cannot be made the subject of a bottomry transaction. *The Lochiel, Miles*, 2 W. Rob. 34., 7 Jur. 265., 2 Notes of Cases, 177.

64. The master has an implied authority in a home as well as in a foreign port, to borrow money for necessary use of the ship, where the owner is absent and great prejudice might arise otherwise from the want of communication, but *aliter* where the owner was residing only at a distance of eleven miles from the port where the ship was, although three applications had been made to him without effect, and the ship could not be cleared without an advance, and although the master raised a sum on the credit of the owner and not on his own. *Johns v. Simons*, 2 Ad. & Ell. N. S. 425.

65. A bottomry bond granted by the master of a British vessel at Plymouth, the owner, who lived in Scotland, being dead insolvent, upheld, a sufficient case of necessity being shown. The authority of the Court to take cognizance of such bonds held not to depend upon the locality of the owner's residence, but upon the necessity of the case. *The Trident, Simpson*, 1 W. Rob. 29., Smith's Merc. Law, 383. n.

#### IX. OF THE DUTIES OF THE MASTER BEFORE HYPOTHECATION.\*

66. It is the duty of a master before hypothecating his vessel to communicate, if possible, with his owners. If he had an opportunity and neglected to do so, the Court would hold him not to have been in that state of extreme necessity in which alone the law allows to the master the power of hypothecation. *La Isabel, Bozo*, 1 Dodson, 274.

67. It is not absolutely necessary that the master should communicate with the consignee of the cargo before hypothecating his vessel. *Ibid.* 275.

68. It is the duty of the master of a vessel which has met with an accident in a foreign port, to consult Lloyd's agent as to the repairs, before taking up money on bottomry. *The Lord Cochrane*, 8 Jur. 715., 3 Notes of Cases, 172.

69. A master is not bound to tranship the cargo because he might have done so, in preference to taking up money on bottomry for the ship's repair; nor would a bottomry bond be invalid because he might have, but had not, done so. *Ibid.*

70. The master of a vessel requiring supplies for the further prosecution of her voyage, is bound to ascertain whether such supplies can be procured on the personal credit of the owner, before he has recourse to a bottomry bond to obtain such supplies. He has no right to fix the owner with a bottomry bond until he has ascertained its absolute, and, therefore, its legal necessity. *Heathorn v. Darling (The Eliza)*, 1 Moore, 5.

71. Where the master of a vessel in a foreign port has the means of knowing that he may obtain the supplies the ship is in need of on the personal security of his owners, he is bound to show that he exercised due diligence to ascertain that fact, in order to support a bottomry bond given by him for such supplies. The facts of the case showing that the master had facilities for such information, and did not exercise due diligence to ascertain it, a bottomry bond given by him for such supplies pronounced against, reversing the decision of the Court below in its favour. *Ibid.*

#### X. WHAT INSTRUMENTS ARE TO BE CONSIDERED AS — ET CONTRA.†

72. By the maritime law every contract of the master implies an hypothecation, but otherwise by the common law, unless it be so expressly agreed. *Justin v. Balam* (1 Ann.), 1 Salk. 34.

\* 26. A regular survey by competent and skilful persons, and repairs made in pursuance of their recommendation, is *prima facie* evidence of the propriety of making the repairs, to justify the master and lender on bottomry. *The ship Fortitude*, per Story J., Circuit Court of the United States at Boston, May term, 1838. Curtis's (AMERICAN) Adm. Dig. 93.

27. If the master has money of the owner on board, he cannot resort to bottomry until he has first applied it as far as it will go. It seems, also, that he cannot if he has money of his own on board. *The Packet*, 3 Mason's (AMERICAN) Rep. 255.

† 28. The name of bottomry has been sometimes incorrectly applied to a contract by the terms of which the ship itself is not pledged as a security,

73. An instrument under seal executed by the master (who was also owner) for the repayment of money borrowed for repairing the vessel, and thereby stipulating that the vessel should be and remain a security by way of bottomry for the repayment thereof; and that as well his executors, &c. as the said vessel, should be bound in the penal sum of so much, operates as a mortgage of the vessel, so that the party takes possession; after which his right is not defeasible by a subsequent execution at the suit of another creditor. *Ladbroke v. Crickett*, 2 T. R. 649.

74. Bonds given by the master at Cork (prior to the Union) to A. and B. to cover expenses of repairs to the ship, advanced by them, being agents of two of the principal owners of the cargo, upon the credit of such owners, who had subsequently paid the amount of such bonds, *Held*, to be in the nature of bottomry; payment thereof pronounced for out of ship and freight. *The Rhodamanthe*, *Mayer*, 1 Dodson, 206.

75. A bond, not an hypothecation bond in the sense which the Court of Admiralty applies to the term, cannot be considered as such to give the Court jurisdiction, because it is held to be an hypothecation bond in the East Indies, where it was entered into. *The Atlas*, *Clark*, 2 Hagg. 54.

76. Claim of supercargo for some bills of exchange out of a prize, asserted to have been given for money borrowed for the repairs of the ship, and purchased afterwards on his own account from the person in whose favour he had originally drawn them, on a suggestion that they were in the nature of bottomry bonds, rejected. *The Benrom*, *Fromer*, 2 C. Rob. 5.\*

77. Where the master in consequence of damage on the voyage, of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England, but the owners, refusing to ratify the sale or consent to the registry of the ship in the plaintiffs' names, put men on board to take possession of her and the cargo; the Court of Chancery, considering it a question of purely legal title, and the taking possession a mere trespass, refused to interfere by injunction to restrain the owners, and *Held* that the bill of sale of the ship could not be treated as in the nature of bottomry. *Ridgway v. Roberts*, 4 Harc (v. ch.) 106.

*See ante*, note 3.; and *post*, note 51.; and *No.* 106.

## XI. OF THE CONSTRUCTION OF —

### 1. Generally.†

78. The Court of Admiralty will not, in a well-founded claim of parties holding a bottomry bond, enter upon a minute criticism of the language of the bond, or regard any defect in the formality thereof. *The Alexander*, *Tate*, 1 Dodson, 280.

79. Bottomry bonds must be construed by the tenour of their contents alone. Proof of intention of the contracting parties cannot be admitted to supply any deficiency therein affecting their validity. *The Emancipation*, *Tucker*, 1 W. Rob. 124. 128.

*See ante*, Nos. 1. to 17.  
and *notes*; and *post*, No. 110.  
and *notes* 77. and 78.

but the repayment of money with a high premium for the risk is made to depend on the success of a voyage, the lender having, of course, only the personal security of the borrower for the due performance of the contract. Loans have, it seems, sometimes been made in this manner, and probably also with a pledge of the ship itself to an amount exceeding the value of the borrower's interest in the ship, and such a contract is still legal in this country in all cases, except the cases of ships belonging to British subjects bound to or from the East Indies, as to which the stat. 19 Geo. 2. c. 37. s. 5. restricts such contract to the amount of the borrower's interest in the ship or cargo. *Abb. Sh.* 151—153.

29. A bond executed as an hypothecation, but not upon the principles which govern such securities, is not a bottomry bond capable of being enforced in a Court of Admiralty, but must be proceeded on at common law. *Henry v. The ship*

*John and Alice*, 1 Washington's (AMERICAN) Rep. 293.

\* 30. Bills of exchange drawn by the master on the owner as security for money advanced to the master, though accompanied with a verbal engagement by him that the ship shall be liable, cannot be considered as an instrument of hypothecation. *Abb. Sh.* 160., *Smith's Merc. Law*, 380.

† 31. Bottomry bonds are the creatures of necessity and distress, and may be expected to assume different shapes, which cannot be limited except by the condition of a faithful and beneficial discharge of the authority exercised in granting them, as being necessary for the preservation of property. *Abb. Sh.* 157.

32. Bottomry bonds, being the language of commercial men and not of lawyers, will receive a liberal construction to give effect to the intention of the parties. *Abb. Sh.* 158., 2 *Park on Ins.* 888.

2. *As expressing or implying maritime risk — et contra.*

80. Maritime risk cannot be inferred from the word "hypothecate" in a bottomry bond. Such a word is ambiguous, and may mean bottomry or mortgage only. Nor can it be inferred from the rate of interest therein. *The Emancipation*, *Tucker*, 1 W. Rob. 130.

81. A covenant in a bottomry bond for the payment of the money advanced "after the ship arrives at her port;" *Held* sufficiently to express the obligation to be on the sea risk. It is not necessary to mention the sea risk expressly or in exact terms, but it must be implied to give validity to the bond. *The Nelson, Brown*, 1 Hagg. 172. 177.

82. An instrument executed in a foreign port by the master of a ship, reciting that his vessel, bound to London, had received considerable damage, and that he had borrowed 1077*l.* to defray the expenses of repairing her, proceeded as follows:—"I bind myself, my ship, her apparel, tackle, &c., as well as her freight and cargo, to pay the above sum with 12*l.* per cent. bottomry premium; and I further bind myself, said ship, her freight and cargo, to the payment of that sum, with all charges thereon, in eight days after my arrival at the port of London, and I do hereby make liable the said vessel, her freight and cargo, whether she do or do not arrive at the port of London, in preference to all other debts or claims, declaring that this pledge or bottomry has now and must have preference to all other claims and charges until such principal sum with 12*l.* per cent. bottomry premium, and all charges are duly paid." *Held* upon error, that this was an instrument of bottomry, for an intention sufficiently appeared from the whole of it that the lender should take upon himself the peril of the whole voyage; that the words, "my arrival," must be understood to mean "my ship's arrival," and that the words, "I make liable" the said vessel, her

freight and cargo, whether she do or do not arrive at London," were intended only to give the lender a claim on the ship in preference to other claims, in case of the ship's arrival at some other than the destined port, and not to provide for the event of the loss of the ship. *Simmonds v. Hodgson* (in error), 3 B. & Ad. 50.; S. C. overruled, 3 M. & P. 385., 6 Bing. 114.

*See post*, No. 108.

3. *As to the commencement of the risk.\**

4. *With reference to capture.*

83. In bottomry and respondentia bonds capture does not mean a mere temporary taking, but it must be such a capture as to occasion a total loss, and therefore if a ship be taken and detained for a short time and yet arrive at the port of destination within the time limited (if time be mentioned in the condition), the bond is not forfeited, and the obligee may recover. *Joyce v. Williamson* (23 Geo. 3.), 3 Dougl. 164., 2 Park on Ins. 896., 2 Marsh on Ins. 760.

## XII. OF LENDERS ON —

1. *Who may be — et contra.†*

84. A party cannot lend money on bottomry of a vessel if at the time he be indebted to the owners thereof in respect of the vessel. *The Hebe, Hampton*, 2 W. Rob. 146—150., 10 Jur. 231., 4 Notes of Cases, 361.

85. If, however, his debt be less than the sum so advanced, the bond is valid to the extent of the surplus, and the registrar and merchants are the proper tribunal to determine the deductions. *Ibid.*

86. An agent of the owner may, under some circumstances, take the security of a bottomry bond. Circumstances that would and would not justify the same considered. Bottomry bond given to the agent of the

\* 83. Bottomry bonds generally express from what time the risk shall commence, as that the ship shall sail from London to such a port abroad, &c. In such cases the contingency does not commence until the departure, and therefore if the ship receive injury by storm, fire, &c., before the beginning of the voyage, the person borrowing alone runs the hazard. But if the condition be "that if the ship shall not arrive at such a place by such a time, then, &c.," in these instances the contract commences from the time of sailing, and a different

rule as to the loss will necessarily prevail. 2 Park on Ins. 895., *Beawe's Lex Mercat. Red.* 4th ed. 127.

† 84. The 6 Geo. 1. c. 18. s. 12., prohibiting any company or partnership but those thereby authorized, from insuring ships or lending money on bottomry, is repealed by 5 Geo. 4. c. 114., so that now any company or partnership may do so.

85. The 6 Geo. 1. did not extend to prevent partners from lending money on respondentia. *Gore v. Wynne*, M. & M. 393. (Tindal.)

owner of the vessel pronounced against. *The Hero, Howard*, 2 Dodson, 143.

87. Consignees of cargo advancing money for the necessary repairs of a ship in a foreign port, *Held* to be justified in taking a bond of hypothecation from a person whom, as a measure of necessity, they had themselves substituted for the former master. The Court will watch the transaction narrowly to detect collusion, but where none is apparent, will strain hard to support the appointment of such person as master and his competency to discharge the functions thereof. Advances made shortly prior to such appointment, *Held* to be entitled to be included in such bond. Bond pronounced for. *The Alexander, Tate*, 1 Dodson, 280.\*

88. It is no objection to the validity of a bottomry bond that it is given to the consignee of the cargo, the necessity for borrowing and the fairness of the transaction being established. *The Augusta*, 1 Dodson, 283.; see *Weston v. Foster*, 2 Bing. N.C. 693.; *The Tartar*, 2 Hagg. 1., Smith's Merc. Law, 384.

See *antè*, Nos. 47, 48., and  
*post*, Nos. 126, 127, 128, 131.  
151. 153.

## 2. Of the bondholder's title.†

89. The holder of a bottomry bond made in time of peace on a vessel of a country becoming an enemy cannot, on the capture of such vessel, claim payment out of the proceeds in the Prize Court. The bottomry holder acquires the *jus ad rem*, but not the *jus in re*, until it has been converted and appropriated in a court of justice. The property of the vessel continues in the former proprietor, who has merely

given a right of action against it. *The Tobago, De Witte*, 5 C. Rob. 218.†

90. A contract of hypothecation made by the master does not transfer the property of the ship, though expressed so to do. It only gives the creditor a right or claim upon it to be carried into effect by legal process. *Johnson v. Shippen* (1703), 2 Ld. Raym. 984., Abb. Sh. 154.

91. Where a bottomry bond is admitted to be drawn in legal form, and entitled to payment, the parties are bound by the terms of the agreement therein, and the Court will not refer the matter to the registrar and merchants to make such a deduction on account of the rate of exchange as is usually made in ordinary cases of mercantile negotiation. Application for such reference made by the owner rejected, with costs. *The Jane Vilet, Tindell*, 2 Hagg. 92.

See *antè*, Nos. 11, 12, 13.  
16. 35. 38., Note 11.; and  
*post*, Note 51.

## 3. Of the rights of — §

92. Whoever advances money on bottomry, whatever may be the amount undertaken to be advanced, and however large the value of the ship and freight, has a perfect right to take a security on ship, freight, and cargo. *The Lord Cochrane*, 8 Jur. 715., 3 Notes of Cases, 712.

93. The Crown or the captor is not to regard latent remote claims of third parties arising on foreign transactions, such as bottomry, &c. It takes *cum onere*, but not *cum onere universali*, and succeeding by capture to the rights of the owners of ship and cargo, succeeds also to the obliga-

\* 36. Hypothecation cannot be to a consignee. *Liebart et al. v. The Emperor, Bee's* (AMERICAN) Rep. 339.

† 37. A valid bottomry bond will be upheld where there are no laches on the part of the lender, even against a *bond fide* purchaser without notice. *The Draco*, 2 Summer's (AMERICAN) Rep. 157.

‡ 38. A bottomry bond made by the master vests no absolute indefeasible interest in the ship on which it is founded, but gives a claim upon her which may be enforced with all the expedition and efficiency of the Admiralty process. *Blaine v. The Charles Carter*, 4 Cranch's (AMERICAN) Rep. 328.

§ 39. There is now no restriction by the law of England as to the persons to whom money may be lent on bottomry or at respondentia, with the single exception of loans on ships of foreigners trading to the East Indies. 2 Park on Ins. 902.

40. An alien enemy holding a bottomry bond upon a cartel ship, for the purpose of enabling her to perform her voyage and bring prisoners, may enforce such bond in the Admiralty Courts of the country to which the vessel belongs, for such vessel is *pro hoc vice* a neutral licensed vessel, and all persons concerned in her navigation upon the particular service on which both belligerents have employed her, are neutral in respect to both, and under the protection of both. *Crawford et al. v. William Penn*, Peter's (AMERICAN) Circ. C. Rep. 106.

41. By the law of England, a lender on bottomry is not entitled to the benefit of salvage, or liable to contribute to a general average, but the laws of France and Denmark differ from that of England in this respect. 2 Park on Ins. 565. 898.

tions of those parties against each other arising out of the immediate transaction. *The Constantia Harlessen, Knudson*, 1 Edwards, 232.; S. P., *The Tobago, De Witte*, 5 C. Rob. 218.; and *The Marianna, Posadillo*, 6 C. Rob. 24.

94. By 6 Geo. 4. c. 16. s. 53. the obligee in any bottomry or respondentia bond shall be admitted to claim, and, after the contingency shall have happened, to prove his demand in respect thereof, and receive dividends with the other creditors as if the contingency had happened before the issuing the commission against such obligee.\*

95. A lender on bottomry cannot recover if a loss happen by capture, if it be such as to occasion a total loss; but if the ship be taken and detained for a short time, and yet arrive at the port of destination within the time limited (if time be mentioned in the condition) the bond is not forfeited, and the obligee may recover. *Joyce v. Williamson*, (23 Geo. 3.), 3 Dougl. 164., 2 Park on Ins., 896., 2 Marsh on Ins., 760.

*See antè, No. 39., and post, No. 182.*

#### 4. Of the duties of—

96. A party lending money on bottomry is not obliged to see to the due application of it. If the master of the ship misappropriate part of such money, the lender on bottomry, if he did not participate in the guilt, cannot be affected by it. *The Jane, Birkley*, 1 Dodson, 464.

97. It may be a question whether a lender on bottomry is bound to see to the application of the money he advances, but it is clear that he must make due inquiry to ascertain that a necessity exists. *The Orelia, Hudson*, 3 Hagg. 84. 86.†

98. It is not incumbent on a foreign merchant advancing money on bottomry for the repairs of a vessel to calculate the expediency of such repairs, unless they are so flagrantly inexpedient as to raise an imputation of fraud. *The Vibilia, Richardson*, 1 Robinson, 10.

*See antè, No. 44. and post, Nos. 132. 134, 135.*

#### 5. Of the liabilities and risks incurred by—‡

*See antè, Notes 33. and 41., No. 95.; and post, No. 103., Nos. 164. to 166. and notes, and note 85.*

#### 6. Of insurances by bondholders on bottomry loans.

99. Where money is lent on bottomry or respondentia, the lender may insure, as well as the owner of the ship and cargo. *Lucena v. Crauford* (1806), 2 N. R. 269.

100. One, having no interest in the ship, lent 300*l.* on a bottomry bond, and insured 450*l.* on the ship. Policy decreed to be delivered up. *Goddard v. Garrett*, (1692), 2 Vern. 269.

101. *A.* lent money on a bottomry bond and insured on the same ship. The ship survived the time limited in the bottomry

\* 42. This statute was passed to remedy a defect in the law, which, in cases of bottomry, where the borrower became bankrupt after the loan of the money and before the event happened which entitled the lender to repayment, did not admit of the lender's proving his debt under the commission, but left him to such redress as he could obtain of the bankrupt, who had previously given up everything to his other creditors. 2 Park on Ins. 903.

† 43. Where there is an apparent necessity for repairs, the lender on bottomry is under no obligation to inquire as to the best mode of making the repairs, or whether they are made in the most judicious manner, or to ascertain the cause of the injury. As, for example, where an acknowledged leak is, or how it is caused. It is sufficient if he acts with good faith, and does not co-operate wilfully in any unnecessary expenditure. *The ship Fortitude*, per Story J., Circuit Court of the United States at Boston, May term, 1838, Curtis's (AMERICAN) Adm. Dig. 93.

‡ 44. The risks to which the lender on bottomry undertakes to expose himself are for the

most part mentioned in the condition of the bond, and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify, "*Limita hoc singulariter, ut creditor subeat periculum navigationis in casibus fortuitis tantum.*" These accidents are tempests, pirates, fire, capture, and every other misfortune except such as arise either from the defects of the thing itself on which the loan is made, or from the misconduct of the borrower, for (according to Roccus, before quoted) "*Secus est si infortunium, vel naufragium ex culpa debitoris processerit, quia tunc creditor non tenetur de periculo et damno, in quod incurritur ex culpa vehentis, prout in simili deciditur in materia assecurationis, ut quantumcunque assecuratio sit generalis, non continet periculum aut damnum, quod facto assecurati contingit.*" 2 Park on Ins. 896., Roccus de Navibus, not. 51., 2 Valin. 14.

45. In a loan on bottomry the lender runs no risk though the goods should be lost. 2 Park on Ins. 869.

46. *Semble*, that a lender on bottomry would not be liable for any accident arising from the barratry of the master. *Ibid.* 896.

bond, but was lost within the time limited in the policy: *Held*, that he was entitled to the money on the bond, and also on the policy. The policy, however, was held void on other grounds. *Ibid*.\*

102. The defendant lent the plaintiff 250*l*. on a bottomry bond, and afterwards insured on the same ship; but the insurance was larger as to the voyage, there being liberty to go to other ports and places than what were contained in the condition of the bottomry bond. The ship being lost, the defendant recovered the money on the policy of insurance, and also put the bottomry bond in suit. The ship, though lost, had deviated from the voyage mentioned in the bond, in going to Virgin Gardo to buy salt. The plaintiff filed a bill in Chancery, contending that the defendant ought not to have a double satisfaction, to recover both on the insurance and also on the bond; he having insured only in respect of the money he had lent on bottomry, and having no other interest in ship or cargo, and that therefore he (the plaintiff) should have the benefit of the insurance on paying the premium: but *Held* that the defendant, having paid the premium, was entitled to the benefit of the policy, and ran the risk whether the ship was lost or not; and that the insurers might as well pretend to have aid of the bottomry bond, and to discount the money recovered thereon, as the plaintiff to have the money recovered on the policy to ease the bottomry bond. *Harman v. Vanhatton* (1716), 2 Vern. 717.

103. A total loss, within the meaning of a bottomry bond, cannot happen if the ship exist in specie, although it may be so much injured in the voyage as not to be

worth repairing and bringing to the ultimate place of destination, so as to constitute a total loss within the meaning of a policy of insurance on the ship. *Thompson v. Royal Exchange Assurance Company*, 1 M. & S. 31., Abb. Sh. 151.†

*See antè*, Nos. 35. 39.,  
*and post*, Nos. 158. 226,  
227, 228.

### XIII. WHO MAY IMPUGN —

104. Assignees are in no better situation in opposing a bottomry bond than owners where there is no bankruptcy. *The St. Catherine, Sinclair*, 3 Hagg. 253.

105. *Semble*, That the master, though the original hypothecator of the ship and a part-owner, is not precluded by the practice of the Court of Admiralty from joining his co-owners in impugning the bond. *Soares v. Rahn (The Saxe Cobourg, Ladd)*, 3 Moore, 1.

*And see post*, No. 134.

### XIV. REQUISITES TO THE VALIDITY OF — ET CONTRA.

#### 1. Necessity for —

*See antè*, Nos. 40. to 58.,  
*and notes*; Nos. 60. to 65.,  
*and notes*; *and post*, Nos.  
111. to 121., *and notes*; Nos.  
126. to 137.

#### 2. Maritime risk.†

106. A bond of hypothecation absolute and without dependence on the accidents

\* 47. An assured on bottomry, who has recovered on the bond, cannot recover also on the policy, as it is against the first principles of insurance law to suffer any man to receive a double satisfaction. 2 *Park on Ins.* 904.

† 48. An assured on bottomry cannot recover unless there has been an actual and total loss. *Ibid.* 894.

49. In insurances on bottomry and respondentia, it is necessary to insert in the policy that the interest insured is bottomry or respondentia, and such is the law and practice of merchants. *Ibid.* 903., and see *Glover v. Black*, 3 Burr. 1394., therein cited.

‡ 50. It is of the essence of a contract of bottomry that the lender runs the risk of the voyage, and that both principal and interest be at hazard, for if the risk go only to the interest or premium and not to the principal also, though a real and substantial risk be inserted, it will be considered a

contract against the statute of usury, and therefore void. 2 *Park on Ins.* 884. The usury laws are now repealed by 2 & 3 Vict. c. 37.

51. If a person who advances money on bottomry does not choose to take upon himself the risk of the ship's return, and will be content not to demand maritime interest, there seems to be no reason why the master should not pledge both the ship itself and the personal credit of the owner. In a case which came before Sir John Strange, Master of the Rolls, wherein a man who had advanced money to refit a ship in distress in Jamaica, had taken from the master both a deed of hypothecation of the ship and bills of exchange upon the principal owner in England for the amount of the sum advanced, claimed payment of the owner personally, the ship having been captured on the voyage home; it was decreed that he should recover the money; and it is said also, that the ship was thought to be well hypothecated. 1 Ves. 435., 14 *Petersdorff's*

of the voyage, *Held* not to be a bottomry bond, at least in the sense which this Court applies to that term, and therefore not subject to its cognizance. Suit to enforce the same dismissed by the Court the more willingly, as questions of East India mercantile practice were involved, more fit to be decided by a reference to East India merchants. *The Atlas, Clark*, 2 Hagg. 49. Affirmed on appeal to the delegates, the Court holding that the interest contemplated in the bond was maritime, and not ordinary interest, and that, *ex concessis*, a maritime risk was therefore necessary; and the bond excluding sea risk was therefore void. *Ibid.* 65.

107. It is essential to the validity of a bottomry bond that a maritime risk should be expressed therein, directly or indirectly, either in immediate terms or by necessary inference from the contents of the bond itself. Bond pronounced against, as not containing any maritime risk, but without costs. *The Emancipation, Tucker*, 1 W. Rob. 124.

108. It is not necessary that a bottomry bond should expressly state that the lender takes upon himself the perils of the voyage; it is sufficient if that can be collected from the language of it. *Simonds and another v. Hodgson* (in error), 3 B. & Ad. 50.

109. A bottomry bond is not invalid because the bondholder, though taking an extraordinary (but not extravagant) maritime interest takes upon himself the risk of the outward voyage only, not the homeward voyage. *The Hero, Howard*, 2 Dodson, 142.

*See ante, Note 3., and Nos.*  
23. 81.

### 3. Maritime interest.

110. It is not necessary to the validity of a bottomry bond that it should carry maritime interest. The fact, however, that only an ordinary rate of interest is demanded, is a material circumstance in considering the character of the instrument under litigation. *The Emancipation, Tucker*, 1 W. Rob. 130.

## XV. OF THE VALIDITY OF — ET CONTRA.

### 1. For what supplies bottomry may be had recourse to — et contra.\*

111. In cases of necessity abroad, such as to procure bail where the vessel and cargo are libelled as prize, the master may hypothecate. *Johnson v. Greaves*, 2 Taunt. 364.

112. Sea stores, particularly for the subsistence of passengers, *Held* to be necessary supplies for the service of the ship, and for which, therefore, it may be hypothecated. *The Duke of Bedford, Morris*, 2 Hagg. 301.

113. *Quære*, whether a bottomry bond taken for advances to pay debts already incurred, would be valid? *The Ariadne, Macleod*, 1 W. Rob. 419., 6 Jur. 513., 1 Notes of Cases, 499.

114. A bottomry bond pronounced against as to part thereof on the ground that the advances in respect of such part were made for the repayment of debts incurred by the ship in a former voyage. *The Lochiel, Miles*, 2 W. Rob. 34., 7 Jur. 265., 2 Notes of Cases, 177.

115. It is no objection to the validity of a bottomry bond, that the whole or a considerable part of the money advanced on it was applied to the payment of debts already incurred, if those be the proper debts of the ship, i.e. debts incurred for necessary expenditure and disbursements. Such a bond pronounced for accordingly, with costs. *The Hebe*, 10 Jur. 231., 2 W. Rob. 146., 4 Notes of Cases, 368.

116. Repairs and necessities became necessary in consequence of an accident antecedent to a particular voyage, but the bond given to meet these expenses was not dated till after the completion of that voyage; *Held* that this objection was not fatal, and that the bond was not invalidated on that account. *The Mary Ann*, 10 Jur. 256., 4 Notes of Cases, 390.

117. A. bought up several simple contract debts due on account of a certain ship. He afterwards advanced money on bottomry on the same ship and repaid him-

*Abt.* 654., *Abb. Sh.* 156., and see *Samson v. Braginton*, 1 Ves. 443., therein cited. *Smith's Merc. Law*, 384.

\* 52. The master of a ship has authority in a foreign port, to procure all supplies and repairs, as well those reasonably fit and proper for the ship and the voyage, as those indispensably necessary

for the safety of the ship and the due performance of the voyage; and if he have not sufficient funds, or cannot obtain money there on his owner's credit, he may take it upon bottomry. *The ship Fortitude*, per Story J., Circuit Court of the United States at Boston, May term, 1838, *Curtis's (AMERICAN) Adm. Dig.* 92.



self out of the money so advanced the sums which he had paid for the purchase of the debts; *Held* that he could not so repay himself, and that the bond was consequently invalid as to the items relating to the debts so purchased. *The Ocean*, 10 Jur. 504., 4 Notes of Cases, 410.

118. *Semble*, that payment of one bottomry bond is a good consideration for a new bottomry bond. *Dobson v. Lyall*, 8 Jur. 969.

119. In case of capture and recapture, the mate, in the absence of the captain, has a right to hypothecate the ship for the purpose of paying the salvage to the recaptors. *Parmeter v. Todhunter*, 1 Camp. 541. (Ellenborough.)

120. *Semble*, that a private debt of the master is not a legitimate consideration for bottomry, though it might prevent his returning with the ship. *Dobson v. Lyall*, 8 Jur. 969.\*

121. Where a bottomry bond was given by the master at New York, as well for advances to obtain his discharge from arrest at the instance of the consignees, on account of damage done on the voyage to part of the cargo, as for payment of the port duties and other disbursements necessary to enable the ship to prosecute her voyage, the Judicial Committee, reversing so much of the decision of the Court of Admiralty as rejected the bond *in toto*, sustained the bond to the extent of the sums advanced for necessary supplies and payment of port duties. *Smith v. Gould and others (The Prince George)*, 4 Moore, 21., 6 Jur. 543. But *semble*, that if the law of New York gave (as was suggested, but not proved,) a specific lien on the ship for such damage, the bond might have been held valid *in toto*. *Ibid*.

*See post*, Nos. 224, 225.

2. *With reference to the voyage and the owners' cognizance and approval thereof.*†

122. The Judges of the High Court of

Admiralty have expressed opinions against bottomry bonds taken where the master is employed with a ship according to his own whim and pleasure, without any authority direct or implied of the owners, and where the person with whom he negotiates may be reasonably supposed to know that he had no such authority. *The Mary Ann*, 10 Jur. 255., 4 Notes of Cases, 376.

123. *Quere*, as to the validity of a bottomry bond given during intermediate voyages, engaged in *without* the knowledge of the owners, or beyond the master's orders. *Ibid*.

124. Bottomry may legally take place whenever a ship is engaged in the execution of a voyage within the intention of the owners, declared by them in any instrument whatever, or where such consent is to be inferred from the facts of the case, and this, whether the voyages are called intermediate or by any other name or appellation it may be thought fit to affix to them, so that a bottomry bond may be valid whatever number of voyages the adventure may include, provided such voyages be in the legal or *de facto* contemplation of the owners. *Ibid*.

*See post*, No. 133.

### 3. *Given under duress.*

125. The general principle of law, that a deed extorted by actual duress is invalid, would clearly extend to vitiate a bond of bottomry compulsorily obtained by duress from the master, even though the advances were made on the promise of a future bond, and the bond itself was taken as a fulfilment of that promise. The execution of a bottomry bond by the master whilst under legal arrest, is not of itself an execution under duress. In order to render a bond executed under arrest invalid, it must be shown that the whole of the transaction was compulsorily forced on the

\* 53. The master cannot hypothecate the ship for any debt of his own, but merely in cases of necessity and for completing the voyage. 2 *Park on Ins.* 373., *Abb. Sh.* 160., and see *Dobson v. Lyall*, 8 Jur. 969.

54. But provided the ship has been in a state of want and the money fairly advanced to the master to relieve her, his subsequent misapplication of it will not deprive the lender of the benefit of his security. *Abb. Sh.* 160.

† 55. If a bottomry lender, in fraud of the

owners, and by connivance with the master for improper purposes, advance his money on a new voyage not authorized by the instructions of the owner, his bottomry bond may be set aside as invalid. But there is no pretence to say that if the master does deviate from his instructions without any participation, or co-operation, or fraudulent intent of the bottomry lender, the latter is to lose his security for his advances *bond fide* made for the relief of the ship's necessities. *The Virgin*, 8 Peter's (AMERICAN) Rep. 538.

master. *The Heart of Oak, Crawford*, 1 W. Rob. 213.

See *antè*, No. 121., and  
*post*, Nos. 136. 150.

#### 4. On the ground of a sufficient necessity.

##### (a) Where proved.

126. A bottomry bond given by the master to the consignee of the cargo for advances made by him, pronounced for, notwithstanding there was a consignee of the ship at the same place, to whom the master had been referred by the owner for advances, the advances necessary being more than the consignee of the ship was authorized to make, he having refused to make such advances except on bottomry, and neither the master nor owner having sufficient credit there to obtain the requisite supplies on the personal security of either. *The Nelson, Brown*, 1 Hagg. 169.

127. A bottomry bond reciting that the outward freight was insufficient to pay the just charges of the British consul. and the necessary disbursements on the vessel; and which bond was proved to have been given for a loan of money in great part required for the payment of the consul's commission, he having managed the affairs of the ship in consequence of the death of the master, pronounced for, but without costs. *Quære*, could not the consul himself have taken the bond? *The Zodiac, Scott*, 1 Hagg. 320.

128. A bottomry bond with 20 per cent. interest, executed the day before the vessel sailed, to consignees of charterers (they having been directed by the charterers "to value on the owner" for a reimbursement of other than trivial expenses), pronounced for, with costs, against the assignee of the owner; the Court holding the bond to have been originally contemplated, that bills of exchange given were only a collateral security and did not affect the bond, that the owner's bankruptcy was not known at the time, and that the master and owner had no personal credit at that port. *The St. Catherine, Sinclair*, 3 Hagg. 250.

129. A bottomry bond granted by the master of a British vessel to a merchant of Philadelphia, who had consented to act as mercantile agent for ship and cargo during the progress of repairs in the port of Philadelphia, pronounced for, with costs, an adequate necessity being proved, the transaction being *bonà fide*, and there being no

proof that the advances were, as suggested, made on personal credit, though the repairs exceeded the value of the vessel by almost double the amount. *The Vibilia, Richardson*, 1 W. Rob. 1.

130. A bottomry bond given by the master at Plymouth, the owner, who lived in Scotland, being dead insolvent, pronounced for, a sufficient case of necessity being shown. *The Trident, Simson*, 1 W. Rob. 29., *Smith's Merc. Law*, 383. n.

131. A bottomry bond on ship, freight, and cargo, for 8558*l.* (the value of the ship on its sale afterwards under a decree of the Court being 1675*l.* only, and the freight 1685*l.*), given by the master to the agents of the ship in a foreign port, for the expenses of repairs of the ship occasioned by her having met with a serious accident, pronounced for, the Court holding the circumstances of the case to disclose a sufficient necessity to justify hypothecation. *The Lord Cochrane*, 2 W. Rob. 320., 8 Jur. 715., 3 Notes of Cases, 172.

##### (b) Where not proved.

132. A bottomry bond was given at the Mauritius, within three days of the ship's sailing, by a part-owner, the *de facto* master, to a stranger, who took no step to ascertain whether the loan was required for necessities for the ship, such loan being larger than advertised for, the balance in favour of the agents and consignees small, and it being deemed probable that the master possessed credit with them, though they had sworn they would have detained the ship until the discharge of the balance: *Held*, that a sufficient case of necessity justifying an hypothecation was not made out, and bond accordingly pronounced against, but without costs, there having been no fraud, but only a want of caution, on the part of the bondholder. *The Orelia, Hudson*, 3 Hagg. 75. 86.

133. A ship was freighted and insured from London to Calcutta and back. The master employed at Calcutta as agents G. & Co., upon whom he had a limited credit; to complete a return cargo, he exhausted that credit and took a cargo under their advice to the Mauritius, and after a series of voyages in defiance of letters from his owners to return home, and during which G. & Co. continued to act as such agents, came back to Calcutta and chartered to G. & Co., who, on a fresh cargo to the Mauritius, received the freight, and

for a small balance took a bottomry bond without premium, and including the above freight: *Held*, that except as to the letter of credit, G. & Co. acted on the credit and responsibility of the master and as his agents only; and that the bond was not in respect of such necessary supplies as justified an hypothecation, except as to a few sums more than covered by the freight received. Bond accordingly pronounced against, with costs. *The Reliance, Hays*, 3 Hagg. 66.

134. A bottomry bond given by the executor of the deceased owner, and the master nominated by him, opposed by mortgagees under a mortgage executed by the owner on purchasing the vessel, and endorsed on the ship's register *sec. stat.*; the bondholder having advanced the money *bonâ fide*, but with a knowledge of all the circumstances, pronounced against, on the ground that a sufficiently strict necessity for the same was not shown, such executor being the legal owner and having ample credit, and the maxim of *caveat emptor* being held to apply against the bondholder: no costs given. The Court, however, intimated that the bond might be good as against the proceeds of the ship after payment of such mortgage. *The Dunvegan Castle, Howard* (2), 3 Hagg. 331.

135. A bottomry bond purchased by the bondholder *bonâ fide* at a public auction, he being the lowest bidder, after a public advertisement for its sale, but given without "an unprovided necessity" and in respect of expenses unnecessarily incurred, in which, however, the bondholder had no privity, pronounced against with costs, such advertisement being held not to dispense with the necessity for reasonable inquiry being made by the bondholder as to the actual existence of an unprovided necessity. *The Prince of Saxe Cobourg, Ladd*, 3 Hagg. 387. Affirmed on appeal. *Soares v. Rahn (The Prince of Saxe Cobourg, Ladd)*, 3 Moore, 1.

136. A bottomry bond given at Hobart Town under a threat of arrest by the owner's agent, (for whose benefit, at least in great part, the bond was entered into) on the day before the vessel sailed, and reciting that it was to enable the master to pay for "necessaries supplied for the intended voyage, and for the use of the brig;" such bond not having been conditioned for previously, but the supplies having been furnished in the first instance on the personal credit of the master, and the vessel not being in want of repairs, pro-

nounced against, with costs, no sufficient necessity for the hypothecation being shown from the accounts themselves or otherwise. *The Hersey, Grimwood*, 3 Hagg. 404. Affirmed on appeal, with costs. *Gore v. Gardener (The Hersey, Grimwood)*, 3 Moore, 79.

137. An alleged bond of bottomry given at Rotterdam, pronounced against as to part thereof, on the ground that the advances in respect of such part were made for the repayment of debts incurred by the ship in a former voyage, and as to the remainder thereof on the ground that there was not sufficient evidence to show that the advances in respect thereof were necessary for the immediate exigencies of the ship, the former part of the transaction being tainted with fraud, inducing the presumption that such further advances were made only to give a colourable appearance to the bond: costs decreed against the bondholder. *The Lochiel, Miles*, 2 W. Rob. 34., 7 Jur. 265., 2 Notes of Cases, 177.

5. *Where the advances were made in contemplation of bottomry — et contra.*

138. The validity of a bottomry bond is not affected by the circumstance of the money being advanced before the bond was given. It is sufficient if it was the understanding of the parties at the time that the money was to be secured by means of bottomry. *La Ysabel, Bozo*, 1 Dodson, 276.; *Smith v. Gould and Others (The Prince George)*, 4 Moore, 28., 6 Jur. 543.

139. A bottomry bond cannot be carried back to cover money advanced on personal credit, without any contemplation of bottomry. *Aliiter*, where such advances were made in contemplation of bottomry. *The Hero, Howard*, 2 Dodson, 147.

140. A merchant may change his security on a new state of circumstances, and fairly resort to a bottomry bond at last, though not contemplated in the original advances. *The Rubicon*, 3 Hagg. 13.

*See post*, Nos. 143 to 146.

6. *Where the advances might have been obtained on personal credit.*

141. Bottomry bonds can only be given in cases where money is not to be had on personal security. *The Sydney Cove, Fudge*, 2 Dodson, 7.

142. A bottomry bond given for the advance of money to a party making the

advance, with a knowledge that the master or owner had a general credit in the place, or an empowered consignee or agent willing to make the necessary advances, is void.

*Aliter*, where the advances are made by the party under an honest ignorance of such facts, not removable by reasonable enquiry.

*The Nelson, Brown*, 1 Hagg. 176.

*See antè*, No. 71.

#### 7. For advances made on personal credit.

##### (a) Of the effect thereof.

143. Funds advanced by the agent of the ship in a foreign port, before contemplation of bottomry, are advanced on the credit of the master or owners. If advanced on the agent's guarantee, they are simple contract debts not entitled to priority of payment, nor authorizing bottomry. *The Hersey, Grimwood*, 3 Hagg. 412.

144. Small advances originally made without any express stipulation for a bond, but followed by a bottomry bond, may be included therein. *Aliter* as to large advances. *The Vibilia, Richardson*, 1 W. Rob. 8.; *The Trident, Simson*, *Ibid.* 34.

145. A bottomry bond in respect of advances, originally made on personal credit, is invalid. *The Trident, Simson*, *Ibid.* 32.

146. If A. B. advance money for repairs, or furnishes necessaries to a ship on personal credit, he shall not be at liberty to take a bottomry bond for what he has done on personal credit, as, having chosen his security, by that he must abide; but the master may borrow on bottomry money of C. D. to pay such debts and fit his vessel for sea. *The Hebe*, 10 Jur. 231., 2 W. Rob. 146., 4 Notes of Cases, 361.

*See antè*, Nos. 139, 140.

##### (b) Of the effect of a right of lien on the ship for such advances.

147. The fact of a lien on the ship, existing by the law of the country in which he bond is given, is an important ingredient, and furnishes a presumption in favour of bottomry and against personal credit. *The Vibilia, Richardson*, 1 W. Rob. 1.

148. Advances on personal credit cannot be included in a bottomry bond, though by the law of the country the lender had a lien on the ship; but advances on the security of such a lien may be the subject of bottomry. *Ibid.* 14.

*See antè*, No. 121.; and *post*, No. 149.

##### (c) Where proved.

149. Advances, upon the personal security of the owner, to the master while in a foreign port, to enable him to supply his ship with necessaries, and for which a bill of exchange drawn by the master upon the owner was given, but which advances, on such bill of exchange having been dishonoured, were included in a bottomry bond afterwards taken for further advances; *Held* not to be recoverable under such bond, as not made upon the security thereof, though the parties making such advances might, according to the law of such foreign port, have detained the ship until the repayment thereof. *The Augusta, De Bluhn*, 1 Dodson, 287.

150. A bottomry bond, executed by the master, whilst under arrest at the suit of the bondholder, for payment of certain bills of exchange drawn by the master on his owners to cover advances made by the bondholder, and which bills had been dishonoured, the bond being drawn to include the advances covered by such bills of exchange and subsequent advances made immediately prior to the execution of the bond, pronounced for to the extent of such subsequent advances, the Court holding no duress to have been proved; but pronounced against with respect to the advances made on the security of the bills of exchange. No costs given, the Court disapproving of the conduct of the bondholder in having imprisoned the master, and having pressed the execution of the bond during his confinement. *The Heart of Oak, Crauford*, 1 W. Rob. 204.

##### (d) Where not proved.

151. Boggs & Co., of London, the mortgagees in possession of a ship consigned to Bruce, Shand, & Co., of Calcutta, subsequently mortgaged the vessel and her freight to an assurance company in London, as security for a loan of 5000*l.* Prior to the departure of the ship from Calcutta, advances were made by, and a bottomry bond executed in favour of, Bruce, Shand, & Co., the consignees. Bond opposed on three grounds: 1st. that it was not originally a bottomry transaction; 2d. that the advances were made for payment of debts previously incurred; and 3d. that the conduct of Shand, jun., and the fact of his being a partner in the house in London and also in Calcutta, were against the integrity of the transaction; pronounced

for, with costs, the opponents thereof being held to have failed in proof of all three grounds of objection. *The Ariadne, Macleod*, 1 W. Rob. 411., 6 Jur. 513., 1 Notes of Cases, 494.

152. A bottomry bond pronounced for, with costs, on the ground that nothing had been advanced sufficient to gainsay its validity, suggestions of the advances having been made on personal credit, &c. being held not proved. *The Mary Ann*, 10 Jur. 253., 4 Notes of Cases, 376.

*See antè, No. 47.*

8. *Where given as collateral securities.\**

153. A bottomry bond, given by the master to the foreign agent who appointed him, binding the owners of the ship, and endorsed as a collateral security for bills of exchange, pronounced valid, with costs, the agent appearing to have acted *bond fide*, and not to have relied for his advances, referred to in the bond, upon the personal security of the owner, though he had done so with respect to some prior trivial advances. *The Tartar, Tharp*, 1 Hagg. 1.

154. A bottomry bond is not invalidated by the circumstance of its having been given as a security for bills of exchange drawn on the owner. *The Emancipation, Tucker*, 1 W. Rob. 129.

9. *Where bills of exchange are taken as collateral securities.*

155. There is no implied undertaking on the part of the owner that a bill of exchange drawn by the master on a third person for money advanced for the ship's use shall be duly honoured. *Harber v. Brotherstone*, 4 Camp. 254.

156. Bottomry bonds are valid, though bills of exchange be given at the same time by way of collateral security. *The Jane, Birkley*, 1 Dodson, 466.; *The Nelson, Brown*, 1 Hagg. 179.; *The St. Catherine, Sinclair*, 3 Hagg. 253.

157. It is a common practice in bottomry transactions for the lender to require the twofold security of a bill of exchange and a bottomry bond. In such cases, the rule is to present the bill of exchange in the first instance, and if there is reason

to believe that it will be paid, the bond is not put in suit. This rule is not inconsistent with the suggestion that the bottomry bond is the original and primary security, for when the expression is used that a bond is the primary and a bill of exchange a collateral security, it only means that the transaction is originally a transaction of bottomry, and the bill of exchange is given as an additional and more negotiable security. *The Ariadne, Macleod*, 1 W. Rob. 421., 6 Jur. 573., 1 Notes of Cases, 494.

158. Where bills of exchange are given as collateral securities for the payment of a bottomry bond, it is every day practice that when the bills of exchange are paid the bottomry bond is not sued on, but the bondholder has his option to content himself with principal and interest without charging the bottomry premiums, except, perhaps, the insurance on the vessel, or to enforce his bond. *The Lord Cochrane*, 8 Jur. 716., 3 Notes of Cases, 180.

*See antè, notes 2 and 51., and post, Nos. 214. 220.*

10. *Where good in part and bad in part.*

159. A bottomry bond is not invalid because not valid *in toto*. It may be good in part and bad in part. *The Hero, Howard*, 2 Dodson, 147.; *The Augusta, De Bluhn*, Ibid. 287.; *The Tartar, Tharp*, 1 Hagg. 1.; *The Nelson, Brown*, Ibid. 176. A bond pronounced for in part and against in part. *The Augusta, De Bluhn*, 1 Dodson, 287.; *Smith v. Gould and others (The Prince George)*, 4 Moore, 21., 6 Jur. 543.; *The Heart of Oak, Crauford*, 1 W. Rob. 204.

160. *Semble*, that the Court of Chancery will pronounce a bottomry bond good in part and bad in part. *Dobson v. Lyall*, cited in *Glascott v. Lang*, 3 Myl. & C. 453.

11. *Other circumstances affecting—et contra.*

161. The validity of a bottomry bond is not affected by its binding the owners personally (which it cannot do) as well as ship and freight, for such bonds may be good in

\* 56. A party took a bill of exchange for a sum advanced for repair of a vessel in a foreign port, and thereafter a bond of bottomry in further secu-

rity: *Held*, that the bond was null, but the party entitled to recover on the bill. *Sword v. Howden*, (1826), 4 S. 757. (N. E. 765.), (Scotch Rep.).

part and bad in part. *The Nelson, Brown*, 1 Hagg. 177.

162. The conduct of a third party will not affect the validity of a bond if the bondholder have no privity therewith. *The Zodiac, Scott*, *Ibid.* 322.

163. The Court never pronounces against a bottomry bond on account of the extent of the premium. *La Ysabel, Bozo*, 1 Dodson, 277.; *The Alexander, Tate*, *Ibid.* 279.; *The Lord Cochrane*, 8 Jur. 716., 3 Notes of Cases, 172.

#### XVI. OF DEVIATIONS FROM THE VOYAGE DESCRIBED IN — AND THE EFFECT THEREOF.\*

164. The holder of a bottomry bond held entitled to recover, notwithstanding the loss of the ship, she having deviated from the voyage stipulated for in the bottomry bond. *Western v. Wildy* (1683), *Skin.* 152.

165. But the deviation must clearly appear on the pleadings, and cannot be taken by implication. *Williams v. Steadman* (1692), *Skin.* 345.

166. The plaintiff entered into a penal bond of bottomry to pay 40 shillings per month for 50*l*. The ship was to sail from Holland to the Spanish Islands, and so to return for England. If she perished, the plaintiff lost his 50*l*. She went accordingly

to the Spanish Islands, took in Moors at Africa, went to Barbadoes, and there perished at sea. The plaintiff being sued on the bond for the penalty, sought relief in Chancery, pretending the deviation was necessary, but his bill was dismissed, save as to the penalty. *Vachel v. Vachel*, (34 Car. 2.), 2 Chan. Cases, 130.; *Anon.*, 4 Viner's Abr. 280. Vide 2 Salk. 444.

167. A master, exercising a sound discretion, is fully justified in carrying his vessel, disabled and in urgent need of repairs, into a port without the limits of the voyage, and therefore of the permission given in a bottomry bond shortly previously executed by him "to touch, stay, and proceed to all ports and places within the limits of the voyage." The conditions of the bond are not violated by such a deviation. *The Armadillo, Benedict*, 1 W. Rob. 256., 1 Notes of Cases, 75.

#### XVII. ON CARGO.†

168. A bottomry bond upon the cargo of a ship is called a respondentia bond, but is of rare occurrence. *The Atlas, Clark*, 2 Hagg. 58.

169. That description of bottomry termed respondentia has been disused in this country since the Act of 19 Geo. 2. c. 37. *The Cognac, Ewen*, 2 Hagg. 386.

\* 57. If the accident happen by the default of the borrower or of the captain, the lender is not liable, and has a right to demand the payment of the bond. If, therefore, the ship be lost by a wilful deviation from the track of the voyage, the event has not happened upon which the borrower was to be discharged from his obligation. This has been decided in several cases. See *Williams v. Steadman*, *Holt's Rep.* 126., *S. C. Skin.* 345., 1 *Eq. Cases Abr.* 372., 2 *Ch. Cas.* 130., 2 *Park on Ins.* 901.

58. Deviation in marine insurances is understood to mean a voluntary departure without necessity, or any reasonable cause, from the regular and usual course of the specific voyage insured. Whenever a deviation of this kind takes place, the voyage is determined and the underwriters are discharged from any responsibility. Nor is it at all material whether the loss be or be not an actual consequence of the deviation, for the insurers are in no case answerable for a subsequent loss, in whatever place it may happen, or to whatever cause it may be attributed. Neither does it make any difference whether the insured was or was not consenting to the deviation. 2 *Park on Ins.* 619. 625.

59. If the master put into a port which is not usual, or stay an unusual time, it is a deviation and discharges the insurer. 1 *Park on Ins.* 438. \*

60. Cruising in the hope of meeting a prize held a deviation; but if a merchant ship carry letters of marque, she may chase an enemy, though

she may not cruise, without being guilty of a deviation. 2 *Park on Ins.* 630.

61. A deviation merely intended, but never carried into effect, does not discharge the insurers. *Ibid.* 654. 657.

62. In insurance cases, if the deviation be but for a single night or for an hour, it is fatal. *Ibid.* 630.

63. Wherever the deviation is occasioned by absolute necessity, as where the crew forced the captain to deviate, the underwriter continues liable. *Ibid.* 634.

64. The justifications for a deviation seem to be, to repair the vessel, to avoid an impending storm, to escape from an enemy, to seek for convoy, or to relieve another vessel in distress. *Ibid.* 636. *et seq.* 647.

65. Where a captain justifies a deviation by the usage of a particular trade, there must be a clear and established usage, not a few vague instances only. *Ibid.* 646

† 66. When a bottomry loan is not made on the vessel but upon the goods and merchandizes laden therein, which from their nature must be sold or exchanged in the course of the voyage, then the borrower only is personally bound to answer the contract, who therefore in this case is said to take up money at respondentia. 2 *Park on Ins.* 869., 2 *Black. Comm.* 458., *Cross on Liens*, 298.

1. Of the right to hypothecate.\*

170. The master may hypothecate either ship or goods, for he is entrusted with both, and represents the traders as well as the owners of the ship. *Justin v. Ballam*, (1 Ann), 1 Salk. 34.

171. The master has power to hypothecate the cargo as well as the ship, for a reasonable purpose only, for the benefit of the ship and cargo. *Hussie v. Christie*, 13 Ves. jun. 599., 9 East, 426.

172. Where the master cannot obtain funds on a pledge of the ship, he has power to bind the cargo for the repairs necessary to effect the prosecution of the voyage. Bond so given enforced in the Court of Admiralty. *The Gratitude*, *Mazzola*, 3 C. Rob. 240.

173. Such is the general principle, and such has been uniformly the practice of the Court, and no prohibition in such a case is known to have issued. *Ibid*.

174. If the repairs of the ship produce no benefit or prospect of benefit to the cargo, the master can neither sell nor hypothecate; but though the prospect of benefit may be more direct and more immediate to the ship, it may still be for the preservation and conveyance of the cargo; and when it is so, it is justly to be considered as done for the common benefit of both ship and cargo. *Ibid*. 261.

175. There is this distinction between a sale of the cargo and an hypothecation of it—only a part can be sold, because the express purpose of the sale is to enable the remainder to go forward, but the whole may be hypothecated. *Ibid*. 263.

*See anti*, No. 69.

(a) Authority of principal owners as binding the remaining owners.

176. The act of the principal owners of cargo, authorizing hypothecation thereof by the master, *Held* binding on the other

owners of cargo. *The Rhadamanthe*, *Meyer*, 1 Dodson, 208.

2. Of the Bondholder's rights against—†

177. In a respondentia bond, the condition, after reciting that the money was lent upon the goods laden and to be laden on board a certain ship on her voyage out and home, was, that if the ship should proceed on her voyage, and return within thirty-six months (the dangers of the seas excepted), and if the borrower, within thirty days after her arrival, should pay to the lender the sum agreed on, or if, in the voyage and within thirty-six months, the ship should be lost by fire, enemies, or other casualties, the borrower should, within six months after such loss, pay to the lender a proportionable average on all the goods carried out and acquired during the voyage which should be saved, then the obligation should be void: *Held*, that this was no more than a personal obligation from the borrower to the lender, and did not give the latter any specific pledge or lien on the home cargo, or the proceeds thereof. *Busk v. Fearon*, 4 East, 319., 1 Smith, 103.

XVIII. OF THE PAYMENT OF—

1. When due—et contra.‡

178. In a cause of bottomry claim of the bondholder to have the bond enforced prior to the arrival of the ship at her port of destination, on the ground, first, that the advances for which the bond was given had been obtained from the bondholder by the fraudulent misrepresentations of the master; and secondly, that the payment of the bond had become due by unnecessary delay, and illegal deviation in the progress of the voyage; dismissed with costs, the bondholder having failed in proof of such suggestions. *The Armadillo*, *Benedict*, 1 W. Rob. 251., 1 Notes of Cases, 75.

\* 67. The hypothecation of the cargo is allowed by the marine law and the law of England, but only in those cases in which it is made to further the carriage of it to its destination. *Abb. Sh.* 366.

† 68. It seems there is no mode by which a person who advances money at respondentia on goods laden on board a ship on an outward and homeward voyage, can resort for payment of his debt to the specific goods that may be brought back. *Abb. Sh.* 153., 2 *Black. Comm.* 458.

69. Upon respondentia the lender must be paid his principal and interest, though the ship perish,

provided the goods are safe. 2 *Park on Ins.* 869., 2 *Valin. Com.* p. 4.

‡ 70. If, after the risk on the bottomry bond has commenced, the voyage or adventure is voluntarily broken up by the borrower in any manner whatsoever, whether by a voluntary abandonment of the voyage or adventure, or by a deviation or otherwise, the maritime risks terminate and the bond becomes presently payable. *The Draco*, 2 Sumner's (AMERICAN) Rep. 157.

71. If a sale is made of the vessel by the borrower, the maritime risk is thereupon terminated, and the bond becomes presently payable. *Ibid*.

179. The general principle is, that a bottomry bond does not become payable until the voyage for which it is given is completed; but if the master, after setting out on the voyage, fraudulently neglect or refuse to proceed with the vessel to her port of destination, the bond becomes instantly due, and payment thereof may be enforced in the Court of Admiralty. *Ibid.*

*See post, note 86.*

2. *Of the personal responsibility of the owners and master for —\**

180. The hypothecation of the ship by the master does not render the owners personally liable. *Johnson v. Shippen* (1702), 1 Salk. 35., 14 Viner's Abr. 300.

181. The master, for expenses, &c., abroad, may hypothecate the ship, and also make the owners personally liable. *Samson v. Bragington* (1750), 1 Ves. 443.†

*See ante, notes 51. and 66., and No. 161.*

3. *Of the relative liability and contribution of ship, freight, and cargo, to —‡*

182. A warrant of arrest in a cause of bottomry having been executed on the ship and parties in possession of the freight, and no appearance having been given, the ship was sold under a decree of the Court; after which an appearance was given for the owners. Motion, at the suit of a mortgagee of the ship, for monition against the parties in possession of the freight to bring in the same rejected, the Court intimating, however, that the bondholder might so apply. On application of the bondholder for payment of the bond out of the proceeds of the ship sufficient for the purpose, further motion of mortgagee to suspend such decree

until the freight should be brought into the registry in part discharge of the bond, rejected, the Court holding that though the freight is part of the bondholder's security, he is not compellable to enforce it. *The Percy, Tanner*, 3 Hagg. 402.

183. A ship having been arrested in a suit for wages, on motion on behalf of a bondholder for a warrant of arrest against the ship and freight, the bond in terms binding only the ship, the Court directed the warrant to issue, though it would not, upon motion, determine whether the bond in such a case extended to the freight. *The Mary Ann*, 9 Jur. 94.

184. The principle of equity, that he who takes a benefit should bear his share of the burthen attaching to it, *Held* to apply to a bottomry bond on ship and freight; and which, as benefiting both ship and freight, should, upon principle, be paid by both *pro rata*, where the owners of the ship and freight are different parties. Claim of a bondholder in such a case directed to be satisfied out of proceeds in the registry of ship and freight. *The Dowthorpe, Lofty*, 2 W. Rob. 74. 81. 85.

185. In an action on a bottomry bond against ship, cargo, and freight, in which judgment as against ship and freight had been allowed to go by default, but in which the consignees of cargo had appeared and contested the validity of the bond, and during the dependance of the suit had obtained an injunction to stay further proceedings; motion of the bondholder for the amount of freight, and of the proceeds of sale of the ship, to be paid out of the registry to him in part liquidation of the bond, opposed by the consignees, on the ground that if the bond, as against the cargo, should be pronounced against, the

\* 72. When money is taken up by the master on bottomry at maritime interest, the owners are never personally responsible. The remedy of the lender is against the master or the ship. If, however, the lender do not choose to take upon himself the risk of the ship's return, and will be content not to demand maritime interest, there seems to be no reason why the master should not pledge both the ship itself and the personal credit of the owner. See *Samson v. Bragington*, 1 Ves. 443., Abb. Sh. 156.

73. Where the interest reserved in a bottomry bond exceeds the legal rate of 5 per cent. interest, the owner could not, before the recent acts, however it may now be, have been made personally responsible, and the lender's remedy was against the master or the ship, though it would seem that if the lender contented himself with 5 per cent., the master might have pledged both the ship itself and

the personal credit of the owner. *Smith's Merc. Law*, 384.

† 74. In cases of bottomry the ship and tackle, if brought home, are (as well as the person of the borrower) answerable for the money lent. *Cross on Liens*, 298.

‡ 75. When freight is pledged in a bottomry bond, it means the freight of the whole voyage and not the freight of that part of the voyage unperformed at the time of giving the bottomry bond. *The Zephyr*, 3 Mason's (AMERICAN) Rep. 341.

76. In payment of a bottomry bond the assets are to be so marshalled as to apply the property of the owner of the ship first. If the master has money on board it should be applied *pro tanto* before the goods of the shippers. It seems, also, that the same should be done with other property of the master on board. *The Packer*, *Ibid.* 255.



consignees would be entitled to be indemnified for costs out of the freight, granted, and payment decreed to the bondholder accordingly: *Seemle*, under ordinary circumstances, freight would be paid out to the bondholder as a matter of course, and the Court would only be induced to hold its bond under circumstances of a strong and special character; as, for instance, that the party suing on the bond was resident abroad, and there was no possibility of compelling him to pay the costs of the suit should he be condemned in them. *The Lord Cochrane, Smith*, 1 W. Rob. 312, 1 Notes of Cases, 283.

186. Privileged goods not paying freight are, nevertheless, liable equally with the rest of the cargo to contribute to the payment of a bottomry bond on ship and cargo. *The Gratitude, Mazzola*, 3 C. Rob. 278.

187. A bottomry bond was sought to be enforced against the freight of a subsequent voyage; the terms of it binding the master the vessel and *her freight*, and the proceeds of the ship itself, not being sufficient to satisfy the bond. No third person had become interested in the freight of the subsequent voyage, and the freight of the first voyage had been appropriated by the owner before the bottomry holder could reach it. *Held*, that under the circumstances the Court could not exceed the proper limits of its jurisdiction, which embraces a wide equity, in decreeing the freight of the subsequent voyage to be liable to the demand of the bondholder. *The Jacob, Baer*, 4 C. Rob. 245.

188. Freight earned from subshippers of goods by permission of charterers of the whole ship, *Held* liable, as against the charterers, in payment of a bottomry bond given at the port of the charterers for advances subsequent to the charter party. *The Eliza, Weddell*, 3 Hagg. 87., 2 Park on Ins. 881.\*

189. The ship and freight are to be first hypothecated; but it seems that if they happened to be omitted in the literal terms of the bond, they would still be

liable in contribution to the extent of their value, although the cargo alone had been made immediately answerable to the foreign lender, who has nothing to do with averages of any kind. *The Gratitude, Mazzola*, 3 C. Rob. 264.

190. In a case where there are several bottomry bonds, one of which is secured on ship and freight, and another on ship, freight, and cargo, the Court will marshal the assets, and satisfy the claim of the bondholder on ship, freight, and cargo, out of the proceeds of cargo; and of the bondholder on ship and freight, out of the proceeds of ship and freight. *The Trident, Simson*, 1 W. Rob. 35.

191. In a case of bottomry, where a bondholder has, directly or by intendment, a lien on the freight and cargo, and the property in these is vested in different owners, the owners of the one may have the aid of the Court of Admiralty to bring the other into contribution, without the bondholder's movement or concurrence; and the Court of Admiralty has the power of apportioning the liability between the two. *The Prince Regent*, cited in *Dowthorpe, Loft*, 2 W. Rob. 85.

192. A bottomry bond on ship and cargo, not mentioning the freight, having been put in suit against the ship and cargo only, and the proceeds of the ship being insufficient to satisfy the bond, the cargo decreed to pay the balance. The Court, on application of the owner of the cargo, required the freight, which had been paid over to other parties before the suit commenced, at the instance of a bondholder, to be brought in, and pronounced it subject to contribution in discharge of the bond; and subsequently intimated that the ship and freight must be exhausted before recourse could be had to the cargo. *Ibid*.

193. Part of a cargo having been sold to defray the expenses of the ship in a foreign port, under a decree of the Court of that place, the owners of the cargo *Held* (overruling the report of the registrar and merchants) not entitled to withhold the freight on such part of the cargo as had been sold

\* 77. Where a bottomry bond was given upon the vessel and freight, *Held*, that it binds them only, and not the cargo, although it was recited in the bond that the master was necessitated to take up money "upon the said schooner, her cargo, and freight." *The Zephyr*, 3 Mason's (AMERICAN) Rep. 341.

78. If the cargo were omitted by mistake in the clauses containing the actual hypothecation, and it

were so stated in the libel, it might furnish ground to reform the contract. *Ibid*.

79. Where a portion of the cargo is pledged on a bottomry bond, it has a right of contribution from the rest of the cargo; and the Court would be inclined to hold this right good as against the other shippers, and not turn the party round to a remedy exclusively against the owner of the ship. *The Packet*, *Ibid*, 255.

from the owner of a bottomry bond on ship and freight, the ship having been put to such expenses by the delay of the owners of the cargo. But *quære*, would not the owners of cargo have been entitled to do so had they not occasioned such expenses. *The Angerona, Marks*, 1 Dodson, 382.

194. A ship being in need of repairs, part of the cargo was sold, and three bottomry bonds were granted by the master; the first on the ship only, the second on the cargo only, and the third on the ship only. The validity of all three was admitted. *Held*, first, that the third bond must be the first paid, and that it must be so paid out of the proceeds of the ship only; that the remaining proceeds of the ship must go in discharge of the first bond; and if the proceeds of the ship were exhausted by payment of these two bonds, then the third bond must be paid out of the proceeds of the freight (though not hypothecated) and the cargo, which latter, however, was not to be applied to the discharge of the second bond until the proceeds of the ship and the freight were exhausted, and that if the proceeds of the ship should not be sufficient to pay the two bonds on the ship, the holders of the first dated bond on the ship must go without payment to the extent of such insufficiency. Secondly, that such charges as towage, pilotage, and seamen's wages, must be paid before any of the bonds, and out of the gross freight, and the proceeds of the ship rateably notwithstanding the proceeds of the ship might be insufficient to discharge the bonds. Thirdly, that a claim made by the consignees of that part of the cargo which was sold to be repaid out of the funds in Court, and before payment of the bonds could not be sustained. *The Constancia*, 10 Jur. 845., 4 Notes of Cases, 285. 513. 677.

195. The act of two of the principal owners of cargo authorising an hypothecation thereof by the master, *Held* binding on the other owners of cargo. Payment of the remainder of such bonds not satisfied by ship and freight, decreed to be paid

by<sup>1</sup> the owners of cargo rateably. *The Rhadamanthe, Mayer*, 1 Dodson, 208.

*See antè*, No. 92., and *post*, No. 204.

#### 4. Of the precedence of bottomry bonds over other claims.\*

196. Wages take precedence of bottomry bonds by the universal rule of the Court. Whoever advances money on bottomry must be presumed to do it with a full knowledge of the law on this point. *The Madonna D'Idra, Paphagiaea*, 1 Dodson, 40.; *The Sydney Cove*, 2 Dodson, 13.; *The Hersey, Grimwood*, 3 Hagg. 407.

197. *Semble*, that wages earned on the outward voyage, before a bottomry bond was taken, would not be entitled to a priority of payment over the bottomry bond, but *aliter* as to wages earned subsequently. *The Mary Ann*, 9 Jur. 95.

198. A bottomry bondholder permitted (on motion) to have a priority of lien on the proceeds of a foreign ship to secure the reimbursement of proposed advances to the crew in payment of wages, the master and consul consenting. *The Kammerhevie Rosenkrants, Morck*, 1 Hagg. 62.

199. In a bottomry suit, prosecuted *in pœnam*, motion, after grant of fourth default, founded on affidavit of the seamen of wages due, that the bondholder might pay them, and have a priority of claim in respect thereof over proceeds, rejected. *The Adolph, Schneider*, 3 Hagg. 249.

200. The holder of a bottomry bond is entitled to priority over all other creditors, *The Orelia, Hudson*, 3 Hagg. 83.; except wages; *The Hersey, Grimwood*, *Ibid.* 407.

201. By the general maritime law, only wages and some small demands of equal urgency take precedence of bottomry bonds. *The Constancia*, 10 Jur. 850., 4 Notes of Cases, 285.†

202. The successful suitor in a cause of damage has a lien on the property condemned to the full extent of the owner's interest in the vessel. His claim is para-

\* 80. The claim or privilege of bottomry is to be preferred to every other, except seamen's wages, for the voyage on which the bottomry is founded; but it does not extend further. *Blaine v. The Charles Carter*, 4 Cranch's (AMERICAN) Rep. 328.

† 81. A bottomry bond will take precedence of a prior mortgage of the vessel, if the mortgagor was allowed to remain in possession. *The Mary*, 1 Paine's (AMERICAN) Rep. 671.

82. Where the ship had made a several voyage since the bottomry bond had become payable without the lien having been asserted, although there was full opportunity, and executions at law were levied upon her before the process of the Admiralty was served, *Held*, that the priority of the bottomry lien over all others was gone. *Blaine v. The Charles Carter*, 4 Cranch's (AMERICAN) Rep. 328.

*Bond of Michael A. J. Spachman - bond for  
 master in a foreign port - in case of necessity -  
 11 days later, bond out on him.*  
 BOTTOMRY.  
 March 3 1857 June 23 1

75

mount to the extent of the value of the vessel at the period of the collision, and takes precedence of claims of mortgagees or bondholders prior to such period. His lien also extends to subsequent accretions in the value of the ship, arising from repairs effected after the period when the damage was occasioned, and at the expense of the owner, or of a stranger who, being cognizant of the collision, effected such repairs on the security of bottomry; but *after* where the party effected the repairs on such security in ignorance of the collision. *The Aline, Stockebye*, 1 W. Rob. 111. 120.

203. In a cause of collision payment of damage to the successful party out of the proceeds of the ship, (sold under the decree of the Court) opposed by a party claiming a preferable lien thereon under an agreement for bottomry, the jurisdiction of the Court to entertain whose claim was denied; the Court, without in the first instance pronouncing for or against its jurisdiction over such a claim, proceeded, as having undoubted jurisdiction in the cause of damage, to adjudicate upon the quantum of proceeds to which the successful suitor was entitled in compensation for the damage, and such proceeds not being sufficient to satisfy both claims, to investigate and ultimately to decide in favour of the priority in part of the bottomry claimant's lien, directing the share of proceeds due in respect of his claim to remain in the registry until notice had been given to the owner, and intimating that, on the owner appearing and showing sufficient cause against the jurisdiction of the Court, it would direct such share to remain until a good title thereto should be established; but that in that event the claimant in the cause of damage, the proportions of the proceeds allotted to him being insufficient to satisfy his claim, might make a good title to such share. *Ibid.* 121.

204. Where there are two creditors, one with a double and the other with a single security, the Court will compel the former so to resort to his double security as to enable the other to be paid. Thus in a case in which there was a bottomry bond on the ship only which had also been arrested for wages, and was insufficient to

meet both claims, the Court would, if the bond were held not to extend by implication of law to the freight, decree payment of the wages therefrom, leaving the whole proceeds of the ship available in satisfaction of the bondholder's claim. *The Mary Ann*, 9 Jur. 95.

*See ante*, Nos. 40. 134. 193.

#### 5. Of the precedence of later over prior dated bonds.\*

205. The holder of the latest dated of two bottomry bonds given by the master to cover the expenses of repairs and further repairs of his vessel in a foreign port, though the difference in the dates of such bonds be very slight, is entitled to priority of payment. *Primum decretum* granted to him accordingly. *The Betsey, Hay*, 1 Dodson, 289.

206. The last executed of two bottomry bonds must be first paid. *The Sydney Cove, Fudge*, 2 Dodson, 1.

207. Of two bottomry bonds the latter has a priority, though both be given at the same port. *The Eliza, Weddell*, 3 Hagg. 89.

208. Application by one of several bondholders for priority of payment by reason of his bond bearing date six days previously, rejected, it appearing that the several parties acted in privity and concert with each other, and that the money was advanced on the same general invitation, for the same repairs in which all were equally interested, and for the same terms: *Held*, that payment of all the bonds must be *pro rata*, without any preference. *The Exeter, Whitford*, 1 C. Rob. 176.

209. Later bottomry bonds are, upon the ground of necessity only, entitled to priority of payment over prior bonds; but this privilege is confined to bonds given in a foreign port, where the master and owners have no personal credit and no other means of procuring the necessary supplies for the repair of the ship. The same privilege is not to be extended to every species of security which may affect the ship. Two subsequent bottomry bonds *held* not to be entitled to priority of payment over a former one, as not within such principle of necessity. *The Rhadamanthe, Mayer*, 1 Dodson, 204. 206.†

\* 83. The last bottomry bond is entitled to priority of payment, as without it the former lenders might have lost their security. 2 *Chitty's*

*Gen. Prac.* 527., *Bynkershoek Quæst. Jur. Pub.* lib. i. c. 19.

† 84. Among several bottomry bonds, the later

6. *Miscellanea*.\*

210. The Court will look to the discharge of bottomry bonds in the simplest and most unequivocal form. If it were to accept averments of collateral or constructive payments, it would destroy the security of such engagements. *The Huntcliff*, *Cole*, 2 Hagg. 283.

211. A bottomry bond (the validity of which was not disputed) uncanceled, and not delivered up as paid, *Held* not to be discharged in a settlement of accounts under an agreement between the owner and the charterer, by which the latter was to effect a payment of the bond in the mode specified in the agreement, and to which it was questionable whether the agent of the bondholder, who was also a partner of the charterer, was privy; there being no evidence that, as agent of the bondholder, he had acted on the agreement, or received the money. Payment of the bond pronounced for, with costs. *Ibid*.

## XIX. OF THE ACCOUNTS ON —

1. *Of the reference thereof to registrar and merchants.*

212. Where the legal effect of a bottomry bond is intended to be questioned before the registrar and merchants, it is more convenient that the reference to them should be made under the directions of the Court. *The Cognac, Ewen*, 2 Hagg. 384.

213. The high rate of interest at which money may be lent on bottomry will not affect the validity of a bottomry bond, but is a proper subject for reference to the registrar and merchants. *La Ysabel, Bozo*, 1 Dodson, 277.; *The Alexander, Tate*, *Ibid*. 279.; *The Lord Cochrane*, 8 Jur. 716., 3 Notes of Cases, 172.

214. Objections to bills of exchange (given as collateral securities to a bottomry bond), as having been drawn at too high a rate of exchange, referred to the registrar and merchants as the proper parties to consider such objections. *The Nelson, Brown*, 1 Hagg. 179.

215. The Court having pronounced for a bottomry bond, and referred the accounts to the registrar and merchants to examine and report, objection by the bondholder that it was not usual so to refer accounts that had not been exhibited in the cause overruled, the Court observing that it was proper the accounts should be audited, and that it was open to the bondholder, if affected by it, to make application to the Court at a future time. *Ibid*. 181.

216. Three bottomry bonds of the same tenour having been put in suit and their validity admitted, a monition for payment thereof, with interest and costs, having been prayed, an application of the owners for reference to registrar and merchants to examine the charges rate of exchange and currency, *Held* to be, under the circumstances, unusual, but afterwards acceded to. *The Albion, Best*, 1 Hagg. 333.

217. In a bottomry transaction, if the charges for the repairs are excessive, and contrary to the custom of merchants, the amount will be referred to the registrar and merchants, and will be reduced by them subject to the opinion of the Court. *The Lord Cochrane*, 8 Jur. 716., 3 Notes of Cases, 172.

218. In a suit on a bottomry bond, the Court, before deciding upon the validity or invalidity of the bond, referred the case to the registrar and merchants, to report, on the whole accounts, whether any and what balance was due to the bondholder upon which a bottomry bond could be taken, and any other special matter which might occur to them. — *The Ocean*, 10 Jur. 505., 4 Notes of Cases, 410.

2. *Charges therein allowed — et contra.*

219. A proper necessity for a bottomry bond being shown, the Court will not look narrowly into the charges, or investigate the accounts too rigidly, lest voyages should be defeated by ships being in want of credit in foreign ports. *The Calypso, Phalp*, 3 Hagg. 164.

220. On a reference to the registrar and merchants to ascertain and report the

dated are entitled to priority of payment, but to entitle them to such precedence they must have arisen out of the destitute situation of the master and his inability to obtain the necessary supplies for his vessel on the personal credit of himself or of his employers. *Smith's Merc. Law*, 385.

\* 85. A lender on bottomry is in no case liable

to average losses, but is entitled to the whole sum advanced, provided ship and cargo arrive at the port of destination. *Walpole v. Ewer*, cited in 2 Park on Ins. 565. 898. Unless a different rule prevails by the usage of trade in a foreign state, see *Newman v. Cazalest*, therein cited.

amount due under a bottomry bond, a commission of 5 per cent. on the balance of the account, and a premium of 12½ per cent. on bills of exchange, disallowed. Objections to the report thereon, on the ground of such disallowances, overruled, but without costs. *The Tartar, Tharp*, 1 Hagg. 14.

221. On reference to the registrar and merchants of the accounts of a bottomry bond, a charge of 5 per cent. commission (about 230*l.*) of the British Consul for managing the affairs of the ship, the master having died, disallowed, and 37*l.* awarded as a remuneration to the Consul for his services. On objection to the report, disallowance of 5 per cent. commission affirmed, but 100*l.* instead of 37*l.* awarded to the Consul. *The Zodiac, Scott*, 1 Hagg. 323.

222. Disbursement of a commission of 5*l.* per cent. on the value of the cargo, charged for care thereof (it having been necessary to unlade it), depositing it in warehouses, and re-shipping it according to the custom of the foreign port, and certified to be correct by the Court there, and which was paid, *inter alia*, out of money raised on bottomry; disallowed by the registrar and merchants on reference to them of the accounts on the bond, and a commission of 5*l.* per cent. on the actual disbursements for the cargo, substituted. Objections to such report overruled. *The Cognac, Ewen*, 2 Hagg. 392.

223. In a suit as to the accounts on a bottomry bond, an objection to a charge of 23*l.*, being 2 per cent. commission on the value of ship and cargo, and 10*l.* per cent. interest charged on the whole bond extending to such commission, the bondholders having had the whole care and management of ship and cargo during the time the repairs to the ship were in progress, and during which time part of the cargo was unladen and reloaded, and such commission having been sworn to be a usual charge in the Baltic trade, but the evidence as to which was conflicting, overruled, and such charges allowed by the Court (holding it unnecessary for the bondholder to show the existence of such custom in all cases of bottomry), and tender of the amount of bond, less such commission and proportion of interest, with costs, pronounced against, with costs; but the accounts being referred to the registrar and merchants to examine and report upon,

such commission disallowed by them on the value of the ship and cargo, and, in lieu thereof, 55*l.*, as a remuneration for care and superintendence, allowed. *The Calypso, Phalp*, 3 Hagg. 163.

224. Disbursements for victualling the crew, to discharge which, *inter alia*, money was raised on bottomry, allowed, on reference of accounts to the registrar and merchants, and confirmed by the Court. *The Cognac, Ewen*, 2 Hagg. 385.

225. Disbursement on account of wages made to crew while in a foreign port, money to pay which, *inter alia*, was raised on bottomry, disallowed on reference of accounts of such bond to registrar and merchants. Objection to such report overruled, on the ground that it was a premature payment that might never become due, and, if so paid, might (as in this case it did) fall on the owners of cargo, who were not properly liable for it. *Ibid.* 393.

226. Lenders on bottomry, if not restrained by special regulations, may insure their advances in a distinct contract on their own account; but it would be contrary to the essential character of bottomry to make such insurance a part and condition of the bond, and after hypothecating the ship in maritime interest for maritime risk, to hypothecate it also in the same bond with the same interest, to take off that risk by other collateral engagements. *Boddington's Noyes*, *Ibid.* 425.

227. A charge for insurance, not being properly a subject of bottomry, cannot be made so by the mere agreement of the master, though the case might be different where the owner himself, in a foreign country, gave the bond. *Ibid.* 426.

228. A charge in the accounts on a bottomry bond, and included in the amount thereof, for insurance on the amount of the bond (though a low rate of insurance, and in consideration of which the premium on the bond was unusually moderate), disallowed by the registrar and merchants as irregular and unusual, maritime interest being only allowed in consideration of maritime risk. Objection to such report of registrar and merchants overruled, and report confirmed. *Ibid.* 422.

### 3. Of the allowance of premiums on—\*

229. The lender on bottomry takes the risk of the vessel hypothecated

\* 86. A foreign vessel having put into Shields in distress, took up money on a bottomry bond

bearing 15 per cent. interest, and conditioned to be paid on the ship's arrival at New York, whither

effecting her voyage in safety. If she is lost on such voyage, the bond is forfeited thereby. On this account a higher rate of interest than legal interest, called maritime interest, is allowed, as a sort of *pretium periculi*. *The Atlas, Clark, 2 Hagg. 52.*; *Boddington's Noyes, Ibid. 425.*

230. The Court has the power, and has in some few instances exercised it, of reducing the amount of maritime interest stipulated for under a bottomry bond; but it will lean to support the rate of interest agreed for unless excessive. Maritime interest at 14 per cent. on a bond, reduced by the registrar and merchants, (on reference to them,) to 10 per cent., increased afterwards by the Court to its original rate of 14 per cent. *The Zodiac, Scott, 1 Hagg. 926.*

231. The Court has authority to reduce the premium on a bottomry bond, if excessive or fraudulent; but it will only exercise this authority on clear and indisputable cause shown, and with great caution. 20l. per cent. charged in a bottomry bond, and disallowed on reference to registrar and merchants, who substituted 12½ per cent., allowed by the Court, and registrar and merchants' report overruled. *The Cognac, Even, 2 Hagg. 386.*

232. The Court of Admiralty has jurisdiction to adjudicate upon the premium charged in a bottomry bond, and will interpose its authority to reduce it where the rate of interest is excessive. Reference to the registrar and merchants, as to the amount of premium on a bottomry bond, decreed. *The Heart of Oak, Crawford, 1 W. Rob. 215.*, 1 Notes of Cases, 114.

233. A., intending to go a voyage, entered into a bottomry bond; but the ship not going the voyage, but lying all along safe in the port of London, the Court decreed the defendant should lose the premium, and accept of his principal with usual interest. *Deguilder v. Depiester, 1 Vern. 263.*

*See antè, Nos. 163. 213. 228.*

she was bound, *vid* Carthagera. She proceeded on her voyage, but suffered so much damage from the weather that she was compelled to put into Plymouth, where having been surveyed and reported unseaworthy and not repairable, the voyage was abandoned. The bond having been put in suit in the Court of Admiralty, *Held*, that under such circumstances the bondholder was entitled to payment of his bond at once, and that part of the risk having been incurred (by the voyage from Shields to Plymouth), the interest could not be severed, and the full rate of interest allowed in the bond pronounced for accordingly. *The Dante, 4 Notes of Cases, 408.* But *semble*, that in the case of a ship not

#### 4. Of the allowance of interest on—\*

234. Interest is legally due on a bottomry bond from the time stipulated for the payment of the bond; but where the bondholders are resident abroad and have no agent in this country, interest on such bond will not be decreed prior to the arrival of a power of attorney, authorizing the receipt of the principal. *The New Brunswick, Magnus Bruce, 1 W. Rob. 28.*

235. Interest on a bottomry bond after the *primum decretum* applied for but refused, the Court observing that interest after judgment was not usually allowed, unless the party who was to pay occasioned unnecessary delay. *The Exeter, Whitford, 1 C. Rob. 173.*

236. A bottomry bond pronounced for, with 4 per cent. interest from the time it became due. *The St. Catherine, Sinclair, 3 Hagg. 250.*

237. A bottomry bond having been disputed and afterwards admitted, but subject to a reference to the registrar and merchants as to accounts, disbursements, and rate of premium, objections to their report as to which had been partially admitted and partially overruled; interest on the bond at 4 per cent. from the time it became payable, pronounced for, with costs. *The Cognac, Even, 2 Hagg. 393.*

### XX. PRACTICE IN SUITS ON—

#### 1. As to the institution of proceedings before the bond is due.

238. The arrest of a ship by the holder of a bottomry bond before the bond was due, *Held* to have been justifiable on the ground that the ship was going to leave the kingdom. *Aliter* had there been an unfounded apprehension only thereof. Protest overruled. *The Jane, Berkeley, 1 Dodson, 461. 464.*

*See antè, No. 178.*

leaving the port in which the bond had been given, or being seized there under an embargo, or of the master while there changing her destination to a better market, the bondholder would be similarly entitled to payment of his bond, but no risk being then incurred, no maritime interest would be due. *Ibid.*

\* 87. In making up the decree, the sum lent and the bottomry interest are to be considered as the principal, and common interest upon this amount is to be added from the time the bond became due to the time of the decree. *The Packet, 3 Mason's (AMERICAN) Rep. 255.*

2. *Of the limitation as to time in the institution of proceedings.*

239. There are few questions in the Court of Admiralty to which any precise limitation is prescribed, but there is a principle of limitation in the administration of every system of jurisprudence to be derived from the nature of things which entitles the Court to avail itself of the maxim—*vigilantibus non dormientibus subveniunt leges*. *The Rebecca, Maddick*, 5 C. Rob. 102.

240. In questions of bottomry the Court is bound to expect particular vigilance; because although bonds of this kind are to be supported with a high hand when clear and simple, yet they must be considered in their recent origin and with a view to all the circumstances on which their honest validity may depend. *Ibid*.

241. A bottomry bond is a negotiable instrument, which may be transferred and put in issue by the person so acquiring it. But where such bond was put in suit originally on the part of a French merchant in 1792, suspended during a subsequent war, not enforced on the recurrence of peace, and, at an interval of twelve years, attempted to be further prosecuted on the part of an English merchant, to whom it had been endorsed, the Court would not allow it to be put in execution under the original proceedings. *Ibid*.

242. Parties who had abandoned a former suit, instituted by them to compel the payment of two bottomry bonds, *Held* not to be at liberty, no strong grounds being shown, to bring a second suit upon the same bonds; such suit dismissed with costs and demurrage. *The Fortitudo, Henrickson*, 2 Dodson, 58.

3. *As to proceedings in—*

243. In proceedings in the Court of Admiralty the suitor is entitled, subject to

the liability of costs, to choose his own mode of proceeding, whether by act on petition and affidavits, or by plea and proof. Libel on behalf of bondholders in a cause of bottomry, the admission of which was opposed as being an unusual mode of proceeding in such suits, admitted to proof; the Court, however, intimating that, if any unnecessary expense or hardship should by such a mode of proceeding be imposed on the parties opposing the validity of the bond, it would hold the bondholder responsible for the costs thereof, though the validity of the bond should be ultimately pronounced. *The Minerva, Crawford*, 1 W. Rob. 169.

244. In cases of bottomry it is not necessary, as a general proposition, for the bondholder in the first instance to mention in the act all the circumstances, for he relies on the execution of the bond. *The Mary Ann*, 10 Jur. 255., 4 Notes of Cases, 376.

*See post*, No. 249.

4. *Of the proof of—* \*

245. The general principle as to bottomry bonds is that all presumptions are in favour of the transaction. Such bonds are not to be affected to the prejudice of the bondholder but on proof of the objections raised against them. *The Duke of Bedford, Morris*, 2 Hagg. 300.

246. The presumption arising from the act of the master in the execution of a bottomry bond is in its favour, and that he would perform his duty honourably, and not unnecessarily subject the property of his principal to heavy burthens. *The Vibia, Richardson*, 1 W. Rob. 5.

247. Bottomry bonds, duly executed and in proper form, are sacred instruments only so far that the legal presumption is in favour of their validity, and the *onus probandi* is in a great measure thrown on the parties seeking to impeach them, and they

\* 88. The lender on bottomry is *prima facie* presumed to have made inquiries as to the apparent necessity of repairs, and to have acted upon the facts and circumstances as made known by the survey to the master. *The ship Fortitudo*, per Story J., Circuit Court of the United States at Boston, May term, 1838, Curtis's (AMERICAN) Adm. Dig. 93.

89. The *onus probandi*, that the master has other funds, or that the owner has a personal credit in that port, lies not upon the lender on bottomry, but on the owner who resists the bottomry bond. *Ibid*.

90. The libellant on a bottomry bond is always expected to prove by evidence other than the bond itself, that the money was lent, or the repairs made and materials furnished, to the amount for which the vessel is liable, that they were necessary to enable her to perform her voyage, or for her safety, and could not otherwise be obtained. He should exhibit an account of the items with the usual proofs to support them, that the Court may judge whether they were necessary for those purposes. *Crawford et al. v. The William Penn*, 3 Wheaton's (AMERICAN) Rep. 484.

must prove their case in the same way as a man admitting his signature to an ordinary bond must prove its invalidity or show that he has discharged it. *The Mary Ann*, 10 Jur. 254., 4 Notes of Cases, 376.

248. The due execution of a bottomry bond in a foreign port *Held* not to be sufficiently proved by a mere formal affidavit of persons resident in this country, of applications for payment and of the sums advanced being still due. *The Sydney Cove, Fudge*, 2 Dodson, 6.

249. Two bottomry bonds of old date *Held* not to be sufficiently proved. Application to give further proof refused. *Ibid.* 10.

250. A bottomry bond may be supported by facts which come out incidentally in the evidence, but the attention of the Court must be primarily directed to those points more immediately put in issue in the pleadings, and it would be most inconvenient to decide the case, not according to what is alleged and proved, but according to that which incidentally transpires in the course of the suit. *The Ariadne, Macleod*, 1 W. Rob. 412., 6 Jur. 513., 1 Notes of Cases, 494.

#### 5. Miscellaneous.

251. Three bottomry bonds of the same tenour having been put in suit by three separate actions, motion (not opposed) to consolidate the same, granted. *The Albion, Best*, 1 Hagg. 333.

252. In a cause of bottomry, on motion in behalf of the bondholder, the proctor of the assignees of the owner directed to bring in all the affidavits and proofs then in his power or possession before the bondholder should be required to return his answer to the statement of the assignees, and on the further affidavits and proofs being so brought in, the bondholder allowed further time to send out to the Mauritius. *The Orelia, Hudson*, 3 Hagg. 77. n.

253. In a suit on a bottomry bond, the bond having been at first pronounced for, though *ex parte*, and the assignees of the owners having written first (in form) to the

act on petition, their counsel began, but the Court, after partial hearing of one of the counsel for the owners, called on the counsel for the bondholder to begin. *Ibid.* 79. n.

#### XXI. COSTS IN CAUSES OF—

254. Partial disallowances made by the registrar and merchants on reporting accounts under a bottomry bond (on a reference to them thereon), *Held* not to affect a previous title to costs. *The Tartar, Tharp*, 1 Hagg. 15.

255. In a cause of bottomry, in which the bond had been pronounced for, but on a reference to the registrar and merchants, nearly one fourth of the original demand had been disallowed; bondholder allowed his costs up to the time of the reference, but condemned in those of the reference and of the suit subsequently thereto. *The Eliza, Walwick*, 1 W. Rob. 328., 1 Notes of Cases, 305.

256. *Semble*, that if the registrar and merchants were, by their report on a bottomry bond, to reduce the amount due on the bond from a considerable to a small amount, the bondholder would not be entitled to costs. *The Ocean*, 10 Jur. 506., 4 Notes of Cases, 571.

257. Where a bottomry bondholder sues in the Court of Admiralty on his bond and succeeds in his suit, and even where, on reference to the registrar and merchants, some, though no very large deductions, are made from the amount claimed, the usual and ordinary course is for the Court, on pronouncing for the bond, to accompany such a decree with costs. *Ibid.*

258. Where the case set up by the bondholder abounded in suspicion, the Court, although it had pronounced for the bond, *Held* the opponents of the bond justified in prosecuting the investigation, and therefore declined giving the bondholder his costs. *Ibid.*

*See ante*, Nos. 47. 107.

128. 132. 134. 150. 237.  
243.

#### BROKER.

1. A broker allowed, under the particular circumstances of the case, the same com- mission upon sale of prize goods under the direction of the East India Company as



upon sale of prize goods generally. Registrar's report disallowing same overruled. *The Harregaard, Peterson*, 1 Hagg. 22.

2. 11. per cent held to be the usual rate of brokerage upon the sale of prize goods generally. *Ibid.*

3. A small amount of freight (81*l.*) remaining in the registry of the Court of Admiralty (all demands against the freight entitled to priority having been deducted) was claimed by the ship's broker under a deed of agreement with the master and part-owner, which, it was contended, conveyed the freight to him, the broker. The

application being opposed by the assignees of the part-owner: *Held*, that neither as the ship's broker nor under the deed was the broker entitled to receive the freight in opposition to the part-owner, and the balance decreed to be paid out to the assignees accordingly. *Dowthorpe*, 2 W. Rob. 87., 3 Notes of Cases, 623.

4. A ship's broker cannot assign the freight of a part-owner without his direct authority and concurrence, though he be a creditor against all the owners of the vessel for money advanced for the service of the ship. *Ibid.*

## CAPITULATIONS.

1. Capitulations are of the nature of ransoms, but admitting of very favourable distinctions. They have always been favourably supported, and it is of great importance to the general interests of the captured that they should be sustained. *Ships taken at Genoa*, 4 C. Rob. 403.

2. A commutation was paid by the Genoese government for ships seized by the commander of a British fleet as prize in the port of Genoa. Application made by the Genoese government for repayment thereof, on the ground that the ships were protected by the terms of the capitulation entered into by the British commander and the Austrian authorities in possession of Genoa at the time, and referred to the Court of Admiralty, rejected; the Court

holding the ships not to have been protected by the capitulation. The commutation money, however, under considerations of a public tendency, condemned to the Crown instead of the captors. *Ibid.* 388.

3. Privateers, though not at the time of capture in actual employment as such, *Held* not to be within the terms of a capitulation protecting private property generally. *Dash and Others*, 1 Edwards, 271.

4. Public property ceded by capitulation but not taken possession of by the captors, and afterwards seized by a privateer, *Held* to belong to the Crown and not to the privateer. *Thorshaven and its Dependencies*, 1 Edwards, 102.

## CAPTORS.\*

I. OF THE PARTIES ENTITLED TO EFFECT CAPTURES — ET CONTRA.

II. OF THE PARTIES ENTITLED TO THE PRIVILEGES OF — ET CONTRA.

III. WHAT SEIZURES WILL ENTITLE PARTIES TO BE CONSIDERED AS — ET CONTRA.

1. *Generally.*

2. *Among different seizors.*

IV. CAPTURES BY TENDERS, OTHER VESSELS, AND BOATS, WHERE ENTITLING THE SHIPS TO WHICH THEY ARE ATTACHED — ET CONTRA.

V. OF THE RIGHTS OF —

1. *Generally.*

2. *Where barred — et contra.*

3. *Miscellanea.*

4. *To freight — see FREIGHT.*

5. *To prize — see PRIZE, FLAG SHARE.*

\* 1. See the several provisions with respect to captors contained in 55 Geo. 3. c. 160., the latest Prize Act, but which expired with the last war.

## VI. OF THE DUTIES OF —

1. *Of the prize master.*
2. *To take prizes to convenient ports for adjudication.*
3. *In other respects.*

## VII. OF THE RESPONSIBILITIES OF —

1. *Generally.*
2. *Of owners of privateers.*
3. *Of commanders.*
4. *In cases of justifiable seizures.*
5. *In cases of unjustifiable seizure.*
6. *Where the prize was protected by a British licence.*
7. *Where using due care and skill — et contra.*
8. *In cases of recapture and subsequent loss.*
9. *In cases of loss of prize when a pilot was on board.*

10. *From taking prizes to inconvenient ports for adjudication.*
11. *For treatment of prize crew.*
12. *For prize property stolen or embezzled.*
13. *In respect of delay in proceedings.*
14. *After lapse of time and irregular adjudication.*
15. *Other cases.*
16. *Of the limitation of —*
17. *Where released — et contra.*
18. *Questions of — how raised.*
19. *For freight—see FREIGHT, cap. VII.*

See COSTS AND DAMAGES; SLAVE TRADE.

## VIII. OF THE EXPENSES OF —

1. *What expenses allowed — et contra.*
2. *Over what claims preferred.*
3. *Costs of, where given — et contra.*

## I. OF THE PARTIES ENTITLED TO EFFECT CAPTURES — ET CONTRA.

1. Persons put on board a cartel ship, with their own consent, by the government of the enemy, to be carried to their own country, are bound to do no act of hostility. Therefore, a capture made by such persons of a vessel of their own country from the enemy is not a recapture in contemplation of law, and gives them no title to salvage, and the former owner no title to claim the vessel. Property so recovered decreed to be given over to the disposal of the Crown. *The Mary, Folger*, 5 C. Rob. 200.

2. Blockading ships are at liberty to take a prize if it come in their way, but they are not to chase to a distance, for that would be a desertion of their duty of blockade. *La Melanie, Lafitte*, 2 Dodson, 130.

*As to the right of convoying ships to effect captures and recaptures — see CONVOY, cap. IV.*

## II. OF THE PARTIES ENTITLED TO THE PRIVILEGES OF — ET CONTRA.\*

3. A French enemy ship taken by a privateer having a letter of marque against

America on board, and which had petitioned for a letter of marque against France, which, however, had not at the time of capture been granted, condemned as a droit of Admiralty taken by non-commissioned captors. *Le Grand Terrain*, 1 Hay & Marriott, 155.; *La Bonne Amitié*, Ibid. 160.; *The Xavier*, Ibid. 219.; *La Mignone*, Ibid. 221.

4. A vessel which had been fitted out as a private ship of war applied for letters of marque, which the Commissioners of the Admiralty on the 29th of December granted a warrant to the Judge of the Admiralty to issue; but by reason of the pressure of business in the Admiralty Court the letters of marque did not issue until the 1st of January following. A prize taken by such vessel conjointly with a commissioned ship, on the 30th of December, condemned (save as to the share of the commissioned ship therein) as a droit of Admiralty; the application and warrant for the letters of marque being *Held* insufficient to vest any interest in intermediate captures until the letters of marque were actually issued. *The Twee Gesuster, note to Cape of Good Hope*, 2 C. Rob. 285.

5. A prize captured by a revenue cutter having a letter of marque, condemned as a droit of Admiralty, the master not having

\* 2. The claimant cannot litigate the question whether the captors were commissioned. It is a question solely between the government and the

captors. *The Amiable Isabella*, 6 Wheaton's (AMERICAN) Rep. 1.

been on board at the time of capture. *The Charlotte, Witt*, 5 C. Rob. 280.

6. A very ancient grant has given to the Lord High Admiral the benefit of all prize taken by persons not commissioned; and it lies on the individual captor in every case to show the authority by which he is entitled to take for his own benefit. *The Melomane, Colas*, 5 C. Rob. 41.

See DROITS OF ADMIRALTY, *cap. II. sec. 1. & 3.*

### III. WHAT SEIZURES WILL ENTITLE PARTIES TO BE CONSIDERED AS — ET CONTRA.

#### 1. Generally.

7. Where the persons asserting themselves to be captors actually came on board the prize for the immediate preservation of their lives, and did not demand the papers in quality of captors, till they had got into a British port, where the master had agreed to carry them; *Held*, that it was no capture, but rather a salvage service on the part of the master in bringing to their country 170 or 180 officers and men. Ship restored, with freight expenses and demurrage. *The Jonge Jacobus Baumann, Muller*, 1 C. Rob. 243.

8. A vessel, though incapable of going out upon a cruise, or in dock undergoing repairs, can make a seizure in port, or she may do so by her boats, or by a mere summons to the parties. *The Charlotte, Avery*, 1 Dodson, 220.

9. A cruiser has no right to compel a neutral master to make a promise to go into a port of the cruiser's country for adjudication; but if he choose to enter into such an engagement the neutral nation sustains no injury from it, and it is fully competent to the cruiser to act under it. *The Resolution, Shapleigh*, 6 C. Rob. 21.

See CAPTURE, *cap. II.*

#### 2. Among different seizors.

10. An American ship was taken by a privateer A., who kept possession ten days, when the prize was retaken by an American cruiser B., who kept possession thirteen days. It was then again recaptured by a British cruiser C., at the time of whose recapture of her the prize master and crew of A., the first captor, were on board the prize. *Held*, that A. was to be considered as the actual captor, and C. as the recaptor. Sentence accordingly. *The Lucretia*, 1 Hay & Marriott, 227.

11. Question respecting priority of seizure by non-commissioned captors determined. *The Amor Parentum, Henn*, 1 C. Rob. 303.

12. In the case of a prize taken by a British captor and re-taken by the enemy, and again captured by a British cruiser, *Held*, that the original captor had not completed his possession; that the incipient interest he had acquired was entirely divested by the subsequent rescue, and that the final British captor was to be considered as the efficient captor, and entitled to the whole benefit of the prize. Condemnation to him accordingly. Sentence affirmed on appeal. *The Polly*, and also *The Margueritte*, note to *The John and Jane, Askeu*, 4 C. Rob. 217.

13. If one party take a vessel and afterwards abandon her, and then another take the same vessel, the last seizor is in law the only captor. *The Diligentia, Moller*, 1 Dodson, 405.

14. Claim of last captor of prize pronounced for, the first captor being *Held* to have relinquished the prize. Costs of such first captor decreed to be paid out of the proceeds. *Ibid.* 413.

15. An officer in possession of a vessel captured by a Queen's ship, and placed there by the captor, is not to be dispossessed by an officer of another Queen's ship for the purpose of enabling that officer to make a second seizure for his own use and benefit. *The Eagle, Litty*, 1 W. Rob. 245., 1 Notes of Cases, 64.

16. A slave ship carrying the American flag, and asserting herself to be American owned, was seized by a Queen's ship A., but not detained. She was afterwards seized by another Queen's ship B., the commander of which put a prize master and crew on board, and sent her for adjudication and condemnation. The Mixed Commission Court having refused to adjudicate thereon, the prize master falling in with the A. applied to the commander for instructions. He took him and the crew out of the slave ship, the master of which afterwards admitted her to be Spanish and not American property, whereupon the commander of the A. seized her, and put a prize master and crew on board. The slave ship afterwards foundered at sea, but the commander of the A. took proceedings in the Mixed Commission Court for, and obtained condemnation of, the vessel to him as seizor. He subsequently applied to, and obtained from, the Treasury the usual bounty on the tonnage of the ship under 5 Geo. 4.

c. 113. Claim to such bounties of the commander and crew of the B. as the real seizors wrongfully dispossessed by the A. pronounced for, the Court holding that it was not competent to the commander of the A. to dispossess the prize master and crew of the B.; and that having so removed them without legal authority, he was not entitled to any benefit from the condemnation of the vessel, but the costs incurred by the commander of the A. in procuring the sentence of condemnation by the Mixed Commission Court allowed him. *Ibid.*

IV. CAPTURES BY TENDERS, OTHER VESSELS, AND BOATS, WHERE ENTITLING THE SHIPS TO WHICH THEY ARE ATTACHED — ET CONTRA.

17. A capture, made by a cutter fitted out by the commander of a man-of-war as a tender and manned from his ship, but without a commission or authority from the Admiralty, cannot enure to the benefit of the King's ship. Captor's claim in respect of a capture by such a tender pronounced against, and the prize condemned as a droit of Admiralty. *The Melomane, Colas*, 5 C. Rob. 41.; *The Island of Curaçoa and its Dependencies* (Lords, May 4, 1805), 5 C. Rob. 282. n.

18. But where the commander grants a commission to such a vessel as a tender, and it is confirmed afterwards by the Admiralty, it takes effect from its date, and will entitle the King's ship to the benefit of captures made by the tender subsequently to such commission. *Ibid.*

19. In order to support the averment of a ship being attached as a tender, it must be shown either that there had been some express designation of her as of that character by the orders of the Admiralty, or that there had been a constant employment and occupation in a manner peculiar to tenders, equivalent to an express designation and sufficient to impress that character upon her. In the case of a capture by a vessel claiming to be considered as a tender attached to a King's ship, proof of her being so attached *Held* not to have been made out. *The Charlotte, Witt*, 5 C. Rob. 280.

20. Where efficient services as joint captors have been rendered by tenders not attached, or by other non-commissioned vessels, the condemnation of their proportion has passed to the Admiralty. Where tenders are attached, the vessels to which they are so attached share equally with

them, under the Order in Council. *The Zepherina, Lima*, 2 Hagg. 320.

21. Tenders properly authorized have in the British service always been considered as identified with the ship to which they are attached, even when acting at considerable distances. *The Donna Barbara, Luiz*, 2 Hagg. 373.

22. The commanding officers of King's ships cannot, by putting their men, arms, and stores on board another vessel, be said to put that other vessel into commission, and entitle it to the privilege of being reckoned amongst the description of vessels to which the interest in prize is given by the Proclamation and Prize Act. *The Melomane, Colas*, 5 C. Rob. 41.

23. Officers are not at liberty to put their men on board as many different vessels as they think proper, that the captures made by such men and vessels so employed may enure to the benefit of their own ship lying in port and knowing nothing of the matter. The Court, as well as the Admiralty, sets its face against this abuse of commissions as interfering with the rights of regular cruisers. *The Charlotte, Avery*, 1 Dodson, 220.

24. A King's ship, commanded by a lieutenant in the Royal Navy and used as a prison ship, the prisoners in which had been removed in consequence of her unfit state to another vessel hired for the purpose (not a King's ship), on board of which the lieutenant and principal part of the crew had removed, pursuant to orders, the establishment of the King's ship being still kept up under the command of the lieutenant, *Held* to be entitled to make a seizure, and such lieutenant to be still the commanding officer thereof sufficiently to entitle him to make a seizure in that capacity; such circumstances being *held* not to be a supercession of his authority or disassociation of the crew. Such claims having been pronounced against, decision reversed on appeal. *Ibid.*

25. The Court would be disposed to extend to ships of war, as far as it could with propriety, the benefit of captures made by their boats acting distinctly in that capacity, many considerations of convenience requiring that captors should be allowed to take in whatever manner their judgment may deem most expedient, according to the circumstances of the case, either by their whole force or by a part detached on the particular service. *The Melomane, Colas*, 5 C. Rob. 47.

26. A ship cannot commission as many

boats as it chooses to send out voluntarily and without necessity. *The Ville de Varsovie*, 2 Dodson, 313.

27. Bounties for the capture of pirates, under 6 Geo. 4. c. 49., made by boats detached from a King's ship at a distance of some miles from the ship, out of sight but not of signal distance, *Held* to be distributable among the whole ship's company, and not the boat's crews exclusively. *Two Piratical Gun Boats*, 2 Hagg. 407.

## V. OF THE RIGHTS OF—

### 1. Generally.\*

28. The nature and purpose of a war is not to be entirely omitted in the consideration of the warrantable exercise of a belligerent's rights relatively to neutral states. *The Maria, Paulsen*, 1 C. Rob. 351.

29. Captors are supposed to lay their hands on the gross tangible property, on which there may be many just claims outstanding between other parties, which can have no operation as to them. *The Marianna, Posadillo*, 6 C. Rob. 24.

30. In the course of proceedings generally against a prize, as such, the prize appearing, upon the general enquiry thereon, to belong to another nation than that to which she had been considered to belong, the captor has a right to avail himself, if he think proper, of any benefit legally arising from such discovery. *The Fortuna, Verissimo*, 1 Dodson, 83.

31. A seizor cannot take advantage of discoveries produced by his own unlawful act of seizure. *Le Louis, Forest*, 2 Dodson, 242.

32. Captors can enforce the production of accounts from the Commissioners of the Navy. *The Jonge Jan, Schnil*, 1 Dodson, 458.

33. No right is vested by any of the prize acts in the captors of a prize before adjudication. *Camden, Lord, v. Home* (in error), 6 Bro. P. C. 243., 2 H. Black. 533., 4 T. R. 382., 1 H. Black. 475.

### 2. Where barred — et contra.

34. A *bond fide* possessor is not responsible for casualties, but he may by sub-

sequent misconduct forfeit the protection of his fair title and render himself liable to be considered as a trespasser from the beginning. *The Betsey, Murphy*, 1 C. Rob. 95.; *The Speculation, Feroe*, 2 C. Rob. 293.; *The John, Beck*, 2 Dodson, 336.

35. Restitution after a first seizure does not bar a second by another party, though if judicially recorded it would bar the first seizor, but whoever ventures on a second seizure must do so under the peril of costs and damages. After a seizure and restitution by the first captors a second seizure was made by officers of the Admiralty instituting new proceedings. Appearance under protest to such second seizure overruled. *Semble*, that the King is not to be considered as the original captor, because he is the fountain of all prize. *The Mercurius, Gerdes*, 1 C. Rob. 80.

36. Delay in instituting proceedings against a prize does not bar the captor's right, the claimant having his remedy in the way of a monition to proceed to adjudication. *The Maria, Paulsen*, *Ibid.* 376.

37. It is no bar to a captor's right to proceed against a prize that he has for some reason or other declined to proceed against other vessels against whom he had an equal, or possibly superior, title on the same grounds. *Ibid.* 377.

38. Captors are barred by lapse of time (seven years) from calling for the investigation of accounts between themselves and the Commissioners of the Navy, unless it can be shown that they had it not in their power to obtain a revision at an earlier period. *The Jonge Jan, Schnil*, 1 Dodson, 453.

### 3. Miscellaneous.

39. An application to take a cargo on bail before adjudication is not granted in the Prize Court but upon consent of the captors. *The Copenhagen, Mullens*, 3 C. Rob. 178.

40. The captor is the person legally entitled to the interlocutory of condemnation of a prize. Application of part-owner to withhold delivery of the interlocutory to the master until bail should have been given to bring into the registry so much of the proceeds as would answer his, the part-

\* 3. To detain for examination is a right which a belligerent may exercise over every vessel, except a national vessel, which he meets with on the ocean. *The Eleanor*, 2 Wheaton's (AMERICAN) Rep. 345.

4. An antecedent municipal forfeiture will not oust the right of captors under the grant of prize, but is absorbed in the more general operation of the Law of War. *The Sally*, 8 Cranch's (AMERICAN) Rep. 382.

owners, interest, refused. *The Venus, Lassen*, 6 C. Rob. 235.

## VI. OF THE DUTIES OF —

### 1. *Of the prize master.*

41. It is not necessary to constitute a prize master that he should take upon himself the navigation of the prize or the immediate possession of the ship's papers. *The Resolution, Skapleigh*, 6 C. Rob. 21.

42. It is the duty of the prize master to take possession of the ship's papers, and on his arrival to make an affidavit and bring them in. *The Goede Hoop, Pieters*, 1 Edwards, 334.

43. Due diligence is incumbent upon a prize master bringing in a prize-vessel into port, and it is a want of such diligence in him not to take a pilot in places where it would have been negligence in the pilot, if taken on board, not to have avoided the difficulties of the navigation. *The William, Hastie*, 6 C. Rob. 316.

### 2. *To take prizes to convenient ports for adjudication.\**

44. The Prize Act† directs the captor to send his prize to some convenient port, allowing him some latitude on the subject, but he is not justified in selecting any port he pleases. It must be a convenient port, and in that consideration the convenience of the claimant in proceeding to adjudication is among one of the first things to which the captor's attention should be addressed. *The Wilhelmsberg, Lubben*, 5 C. Rob. 144.; *The Anna, La Porte*, Ibid. 384.

45. Case of construction of the words "convenient port," in the Instructions to captors as to bringing in prize. "Convenient" is a large and general term leaving a certain latitude of discretion, but to be cautiously exercised, and with reference to the view which the Crown itself must be supposed to have entertained in issuing the Instructions. The important ingredients

of convenience are: 1st, that the port shall be one in which the prize may lie in safety; 2d, that it shall be one of sufficient capacity to receive the prize without unloading her cargo, since captors are not to break bulk; 3d, that it shall be one admitting of ready communication with the Court in which the prize is to be adjudicated upon; subject to these considerations the captors may elect their own port. Costs and damages awarded against captors for taking prize to a port incapable of receiving the vessel without unloading her cargo. *The Washington, Williamson*, 6 C. Rob. 275.

*See post*, Nos. 81. to 84.

### 3. *In other respects.*

46. A captor is bound by the law of his own country, conforming to the general Law of Nations, to bring in his prizes for adjudication where practicable. *The Felicity, Smith*, 2 Dodson, 385.

47. Where a captor is unable to bring in enemy's property his next duty is to destroy it; but where it is doubtful whether or not it is enemy's property, and it is impossible to bring it in to receive a legal decision, the safe and proper course is to dismiss it. *Ibid.* 386.

48. It is the duty of captors, immediately on coming into port, to produce the master and certain of the crew of the prize, to undergo examination, and to bring in all the ship's papers. If the master refuse to deliver up the papers, or to be examined, the captors are to make complaint thereof to the Commissioners, who are to report to the Judge, and a monition is to be prayed against the master accordingly. Should he refuse obedience to the monition, attachment and commitment to prison will follow for a contempt, with the loss of costs and damages in case of ultimate restitution. *The Dame Catharine, De Workeem*, 1 Hay & Marriott, 244.‡

49. Captors have no right, except in cases of physical necessity, to convert property, or even to break bulk, until it

\* 5. The commanders of ships authorized by letters of marque and reprisal against the French republic (as therein aforesaid), shall bring all ships, vessels, and goods which they shall seize and take into such port of England, or some other part of our dominions, as shall be most convenient for them, in order to have the same legally adjudged by our High Court of Admiralty of England, or before the Judge of any other Admiralty Court lawfully authorized within our dominions. *Art. 2.*

*of Regulations to Privateers issued under an Order in Council of 16 May, 1803. See Appendix.*

† 6. These directions are not contained in the Prize Acts, but in the Instructions to Privateers issued under Orders in Council. *See ante*, note.

‡ 7. It is the duty of the captor, in proceedings for adjudication, to produce part of the mariners on board the prize, together with the ship's papers, and bulk is not to be broken before adjudication. *Introduction to Godolphin's Admiral Jurisdiction.*

has been brought to legal adjudication. *L'Eole, Rousseau*, 6 C. Rob. 225.

50. *Semble*, that the captain of a letter-of-marque vessel ought first to produce his commission, to show his authority to demand the production of the papers of another vessel before he is authorized to fire upon such vessel, because her captain does not produce her papers. *Res v. Bailey*, R. & R. C. C. 1. \*

## VII. OF THE RESPONSIBILITIES OF —

### 1. Generally.\*

51. The actual wrong-doer is the only person responsible in a Court of Admiralty for injuries of seizure; and if the Admiral of the station is not privy to the fact, a suit will not be entertained against him. *The Mentor, Campbell*, 1 C. Rob. 179.

52. The whole act of capture is the act of the captor, who is therefore alone responsible for costs and damages. A joint captor is not exposed to such liability. *The Fadrelandet, Hoop*, 5 C. Rob. 123.

53. If an act of mischief is done by the King's officers, though through ignorance, in a place where no act of hostility ought to have been exercised, it does not necessarily follow that mere ignorance of that fact would protect the officers from civil responsibility. *The Mentor, Campbell*, 1 C. Rob. 179.

54. A *bonâ fide* possessor is not responsible for casualties, but he may, by subsequent misconduct, forfeit the protection of his fair title, and be liable to be considered as a trespasser from the beginning. *The Betsey, Murphy*, 1 C. Rob. 95.; *The Speculation, Feroe*, 2 C. Rob. 293.; *The John, Beck*, 2 Dodson, 336.

55. The Court will protect a captor acting *bonâ fide* in pursuance of his rights in an ignorance, honest and invincible on his part, of a foreign fact not governed by his own domestic law, but dependent on transactions with which he is unavoidably unacquainted till actually communicated to him. *The John, Beck*, 2 Dodson, 339.

56. The claimant is entitled to the same measure of restitution whether the captor has acted from proper motives and for the

benefit of the public service, or from improper motives. If from the former, the captor must look to his government for his indemnity. The claimant's right against him is not at all barred thereby. Restitution of ship and cargo destroyed by captors, whilst protected by a British licence, pronounced for, with costs and damages, without reference to the motives of the captor. *The Acteon, Rogers*, Ibid. 52.

57. If a neutral or protected ship is destroyed by a captor, either wantonly or under an alleged necessity, in which she herself was not directly involved, the captor or his government is answerable for the spoliation. The gravest importance of such an act to the public service of the captor's own state will not justify its commission. The neutral is entitled to full restitution in value. *The Felicity, Smith*, Ibid. 384. 386.

58. The Crown or the captor is not to regard latent remote claims of third parties arising on foreign transactions, such as bottomry, &c.; but it takes *cum onere*, though not *cum onere universali*, and, succeeding by capture to the rights of the owners of ship and cargo, succeeds also to the obligations of those parties against each other, arising out of the immediate transaction. Freight having been decreed to the Crown, claim of owners of cargo to deduct advances to master on account of freight allowed. *The Constancia Harlessen, Knudson*, 1 Edwards, 232.

59. The rule that the captor takes *cum onere* is to be understood to apply where the *onus* is immediately and visibly incumbent upon the property. As in the case of freight due from the cargo of an enemy to the ship of a friend, which is an interest directly and visibly residing in the substance of the thing itself. But a mere right of action is not entitled to the same consideration in its transfer from the neutral to a captor. The Prize Court excludes all such liens, for otherwise the captor would be subject to neutral liens being set up to defeat his claims upon hostile property, whilst he could not have the advantage of liens held by enemies upon neutral property. *The Tobago, De Witte*, 5 C. Rob. 218.; *S. P. The Marianna, Posadillo*, 6 C. Rob. 24.

\* 8. The legality of a capture may, under circumstances, exclusively depend upon the ordinances of the government of the captors. If, for instance, the sovereign should, by a special order, authorize the capture of neutral property for a cause mani-

festly unfounded in the Law of Nations, there can be no doubt that it would afford a complete justification of the captors in all tribunals of prize. *Maisonnaire et al. v. Keating*, 2 Gallison's (AMERICAN) Rep. 334.

## 2. Of owners of privateers.\*

60. In a Court of the Law of Nations the act 26 Geo. 3. c. 60., requiring the name of every owner to appear in the ship's register, and the established rule confining the claims of third parties, if British subjects, to registered owners, *Held* binding on British subjects only, and not to bar foreigners from preferring a claim against a *bonâ fide* owner not inserted in the ship's register. A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of the vessel, whose name, however, was not inserted in the ship's register, bill of sale, or letters of marque, *Held* to have been a *bonâ fide* owner, and responsible, as such, to a foreigner. The representative of such owner accordingly held responsible for costs and damages decreed to the foreigner. *The Nostra Signora de Los Dolores, Morales*, 1 Dodson, 296. 298.

61. Damages decreed against the owner of a privateer for injuries sustained by the wilful negligence of the prize master in refusing to receive a pilot on board a captured vessel, and further damages for his cruelty and misbehaviour to the captured crew, which last the Court ordered to be distributed specifically among the crew. *Die Fire Damer, Giese*, 5 C. Rob. 357.

62. A part-owner of a privateer is not exempt from his general responsibility for damages by compensation *pro tanto*, and a release of the claimant as to him. *The Karasan, Yeusef*, *Ibid.* 291.

63. Owners of a privateer acting for themselves and the crew in the sale of the prizes, having neglected to render accounts and delayed the distribution of the proceeds, may be charged with interest on the balances and costs. *Pearse v. Green*, 1 J. & W. 135.

## 3. Of the commanders.

64. The act of the commander is binding upon the interests of all under him,

and he alone is responsible for costs and damages. *The Diligentia, Moller*, 1 Dodson, 405.

65. An order of the Admiralty will justify a seizure, so far as to protect the commander from costs and damages, but will not affect any beneficial interest he may derive from the capture. *Ibid.* 410.

## 4. In cases of justifiable seizure.†

66. In a case of neutral property captured by the English, re-captured by the French, and finally lost to the owners, and where the grounds of the first capture amounted only to probable cause, and therefore the property would have been restored, compensation sued for from the original British captors refused, on the ground that their possession was *bonâ fide* under a probable cause of capture, and their subsequent irregularities in dealing with the property while in their hands were not such as would justly have prevented restitution by the French. *The Betsey, Murphy*, 1 C. Rob. 93. Affirmed, but without costs, on appeal to the Lords Commissioners of Appeal in Prize Causes, 22d June, 1709.

67. Application for compensation in value on a cargo taken on board a Danish ship and restored on further proof, the proceeds of sale being less than the original value, rejected, the case being one of justified seizure, and there being no suggestion that the sale was made for any sinister purposes, or in any manner injurious to the property. *The Two Susannahs, Braren*, 2 C. Rob. 192.

68. Petition for compensation for loss of a vessel whilst in the hands of the captors refused with costs, the Court holding the seizure to have been justifiable. *The Carolina, Nordquist*, 4 C. Rob. 256.

## 5. In cases of unjustifiable seizure.

69. Restitution in value of a prize ship (as to which there was no ground of seizure), lost by the misconduct of the

\* 9. The owners of a privateer are liable for acts of outrage committed by the master or crew, exceeding their authority in the performance of legitimate acts. *The Amiable Nancy*, 1 Paine's (AMERICAN) Rep. 111.

10. If the master of a privateer exceed his orders, and is guilty of faults or crimes to the injury of others, acting in some business different from that in which he was employed, the owner is not liable. *Dias et al. v. The Revenge*, 3 Washington's (AMERICAN) Rep. 262.

† 11. There is a distinction between the effect

of probable cause in the cases of capture *jure belli*, and the effect in cases of municipal seizures. In respect to the law of prize, probable cause will not merely excuse, but even in some cases justify a capture. If there be probable cause, the captors are entitled, as of right, to an exemption from damages; and if the case be one of strong and vehement suspicion, or requiring farther proof to entitle the claimant to restitution, the law of prize proceeds yet further and gives the captors their costs and expenses in proceeding to adjudication. *The Apollon*, 9 Wheaton's (AMERICAN) Rep. 362.



agents put on board by the captors, decreed against the captors. *The Der Mohr, Helmer*, 3 C. Rob. 129.

70. Costs and damages decreed in a case in which it was *held* that there was no probable ground of seizure. *The Triton. Trip*, 4 C. Rob. 78.

71. The Court will accompany restitution with a condemnation in costs and damages where there is no sufficient cause for the seizure. *The Barossa, Tupper*, note to *The Woodbridge, Munnings*, 1 Hagg. 75.

72. Damages and costs given in a case of unjustifiable capture, and loss of ship and cargo consequent thereon. *The Nemesis, Quick*, Edw. 50.

6. *Where the prize was protected by a British licence.*

73. Application for costs and damages against captors, on the ground of detention of a neutral vessel sailing under the protection of a licence, but under circumstances of a suspicious character, though restored, as protected by the licence, rejected, with costs (affirming the decision of the High Court of Admiralty). *The St. Antonius, Willems*, 1 Acton, 113.

74. Claim for an enemy's vessel, seized under circumstances preventing the captors from bringing it into port for adjudication, and destroyed by them, though protected by a British licence, pronounced against, with costs, on proof that the existence of the licence was not disclosed to the captors until after the destruction of the vessel, and of the captors not having sufficient means to inform themselves of such fact. *The Felicity, Smith*, 2 Dodson, 381.

7. *Where using due care and skill — et contra.*

75. Captors, having a *bond fide* possession and using due care, are not responsible for losses occasioned by mere misfortune. *The John, Beck*, 2 Dodson, 336.

76. Claim of the foreign owner against captors for compensation for a ship seized after the expiration of the period limited by a treaty of peace between the two countries, and lost by the captors, pronounced against, on the ground that the possession by the captors was *bond fide*, and that, due care having been used therein, they were not responsible for accident or misfortune. Such decision *held* not to exclude a possible liability of government. *Ibid.* 341.

77. Restitution in value decreed against captors on a prize lost whilst in the custody of the prize master, the Trinity Masters, by whom the Court was assisted, having *held* that there was a want of due diligence in the prize master in not having taken a pilot on board, and that the loss was occasioned by want of skill of the prize master in navigating the prize. *The William, Hastie*, 6 C. Rob. 316.

8. *In cases of re-capture and subsequent loss.*

78. Claim for compensation against captors for a vessel re-captured by the enemy, and lost, the first capture being illegal, pronounced against. *The Betsey, Murphy*, 1 C. Rob. 92. A.

79. In order to make the original captors liable for indemnification, because the neutral property was not restored by the re-captors, it must be shown that the original captors so dealt with the property and accompanying documents, that it could not be ascertained to be neutral on the just and uniform principles of the Law of Nations when it came into the Prize Court of the re-captors. *Ibid.* 96.

9. *In cases of loss of prize where a pilot was on board.*

80. In a case of loss sustained in the navigation of a prize, *Held*, that the taking a pilot releases the captor from responsibility for the navigation of the vessel, unless it can be shown that the loss arose from want of obedience in the crew to the orders of the pilot, or from any cause assignable to the want of that control which the captor is bound to exercise over the crew. Demand for damage pronounced against accordingly. *The Portsmouth*; note to *The William, Hastie*, 6 C. Rob. 317.

10. *From taking prizes to inconvenient ports for adjudication.*

81. A privateer cannot be justified in bringing a prize, taken on the coast of America, across the Atlantic to this country for adjudication, though there might be circumstances justifying such a procedure by a King's ship; as if she were to make the capture whilst bound on the public service, and unable therefore to depart from her original destination. *The Anna, La Porte*, 5 C. Rob. 385.

82. One month's demurrage and costs allowed against captor for sending his prize

(ultimately restored) to an inconvenient port pending adjudication. *The Wilhelmsberg, Lubben*, Ibid. 143.

83. On allowance to captors of their expenses, on the ground of justifiable seizure, deductions therefrom decreed in respect of expenses occasioned by the captors taking the prize to an inconvenient port. *The Principe, Athaelante*, Edw. 70.

84. Captors condemned in costs and damages for carrying a ship and cargo (decreed to be restored) to a remote port for adjudication. *The Catharina Elizabeth, Sjoberg*, 1 Acton, 309.

See *antè*, Nos. 44. and 45.

#### 11. For treatment of prize crew.

85. Where the captors put some of the prize crew in irons, and it did not appear that only this species of security was sufficient for their own protection against the menaces of the prize crew, and it being also a case of restitution from the original capture, 100*l.* damages decreed. *The Saint Juan Baptista* and *La Purissima Concepcion*, 5 C. Rob. 33.

See *antè*, No. 61.

#### 12. For prize property stolen or embezzled.

86. Application against captors for restitution in value of portion of cargo burglariously stolen from warehouses during a commission of unlivery, refused, no negligence or want of proper precaution on the part of the captor having been shown; the Court intimating, however, that, had any such negligence been proved, it would have held the captor responsible. *The Maria* and *The Vrow Johanna*, 4 C. Rob. 348.

87. When restitution of prize property is decreed, if the cargo is deficient, measured by the invoice, from the embezzlement of the captors, they must make it good. If it be not in their hands at the time compensation is sought, but in the hands of Commissioners of the Government, the claimant may seek his restitution directly of the Commissioners; and they must look to the captors. *The Concordia, Bayzard*, 2 C. Rob. 102.

88. A charge of embezzlement of cargo made against the captors referred to the registrar and merchants to inquire into and report upon. *The St. Juan Baptista* and *La Purissima Concepcion*, 5 C. Rob. 33.

#### 13. In respect of delay in proceedings.

89. Costs and damage decreed against

captor for unnecessary delay in bringing prize to adjudication, and for taking her unnecessarily out of her course. *The Peacock, Crofts*, 4 C. Rob. 185.

90. Demurrage, damage, and compensation pronounced due on restitution of an Ottoman vessel, on the ground of great and unnecessary delay in the proceedings of the seisor, occasioning considerable damage to the ship and cargo. *The Madonna del Burso, Antonopoli*, 4 C. Rob. 169.

91. Captors having been guilty of delay in proceeding to adjudication demurrage of two months allowed to the neutrals against the captors. *The St. Juan Baptista* and *La Purissima Concepcion*, 5 C. Rob. 33. In a similar case, demurrage of three months and twenty days allowed against captors. *The Corier Maritimo, Mastah-nich*, 1 C. Rob. 287.

92. The obligation on captors to institute proceedings, *Held* not to attach so strongly while the prize is at sea as when brought into port, though the captors may remain liable for misconduct in having detained at sea. *The Susanna, Smith*, 6 C. Rob. 51.

See *post*, No. 109.

#### 14. After lapse of time and irregular adjudication.

93. Although there has been adjudication before an incompetent tribunal (a Vice-Admiralty Court imperfectly authorized), and a distribution under its decree, the claimant may, even after a lapse of two years, compel the captor to proceed to adjudication before the proper tribunal. Protest of captor in such a case overruled. *The Huldah, Mills*, 3 C. Rob. 235.

94. A monition against captors to proceed to adjudication after a lapse of six years refused; but the Court intimated that mere time would not have been an absolute bar, if the claimant had shown that he had used due diligence, and had been prevented by circumstances of inevitable and incurable necessity from prosecuting his demand in due time. *The Susanna, Smith*, 6 C. Rob. 48.

#### 15. Other cases.

95. Motion for a monition to arrest certain property as prize goods not in the hands of the captor, and not fully identified, refused, the Court intimating that the claimant must first proceed against the captors, who were responsible to him in the first instance. *The General Walterstorff, Thaarup*, 1 C. Rob. 328.

96. Two of the captors having taken proceedings against the bail of a prize agent, a bankrupt, to bring into the registry prize proceeds received by the prize agent to the extent of their bail, and such bail having afterwards, in consequence thereof, made advances to such captors on account of their shares, to stop proceedings, monition against such captors to refund such sums for the benefit of the whole of the captors decreed to be suspended until the agent and bail had first been applied to, and failed to make good the deficiencies. *The Triton, Minderman*, 1 Hagg. 290.

97. Attachment against a captor for proceeds of prize decreed, on appeal, to be restored, refused, the proceeds having been taken possession of by the Government, and being out of his hands. *The San Juan Nepomucena, Yambi*, 1 Hagg. 268.

98. An application of a claimant, not exhibiting any letters of request from the Vice-Admiralty Court, to enforce a monition (decreed by the Court, doubting its jurisdiction, but permitting that question to be raised upon the enforcement of the monition) against a captor for payment of a small sum for demurrage, in which he had been condemned some years previously by such Vice-Admiralty Court, but out of whose jurisdiction he had removed into that of this Court, being resident in England, refused, and the party monished dismissed. *La Madonna della Lettera*, 2 Hagg. 289.

99. Where a prize ship, afterwards decreed to be restored with freight, was lost by the negligence of the prize-master, the whole freight was decreed against the captor, and not limited to the proceeds of the cargo saved. *The Der Mohr, Helmer*, 4 C. Rob. 314.

#### 16. Of the limitation of—

100. By 33 Geo. 3. c. 66. s. 32. the parties shall not be liable, in case of the reversal of a sentence of condemnation, beyond the net value of the proceeds at the time

of the sale of the prize. The meaning is, that the captors shall not be charged with the value of the prize beyond the amount of what is then produced; therefore, they are chargeable with any interest made with those proceeds. *Willis v. The Lords Commissioners of Appeal in Prize Causes*, 5 East, 22., 1 Smith, 399.\*

#### 17. Where released—et contra.

101. After acceptance of such an extrajudicial release as an order of the Government, before adjudication, to release the asserted prize, the claimant would no longer be competent to proceed against the captor, the act of acceptance being a waiver of his judicial remedy. The captor might appear under protest to any such proceedings of the claimant, and the Court would sustain the protest, or else permit him to proceed, not for the adjudication of any prize interest under the seizure, but for all purposes of justification. *The Elsebe, Maas*, 5 C. Rob. 190.

#### 18. Questions of—how raised.

102. Question as to responsibility of captor for loss of prize raised by monition at suit of claimant to proceed to adjudication, and protest of captor thereon. *The John, Beck*, 2 Dodson, 337.

### VIII. OF THE EXPENSES OF—

#### 1. What expenses allowed—et contra.

103. Insurance effected by captor is not an allowable item in his expenses against the claimant, insurance being effected by him to relieve him from responsibility, and not for the benefit of the claimant, who looks primarily to the captor, and is under no obligation to contribute to any additional security. Such a claim is, *à fortiori*, unsustainable where the claimant has himself insured. Where the Court orders a removal, and a fresh risk is incurred, for which the Court directs an insurance, different considerations apply. *The Catherine and Anna, Spanger*, 4 C. Rob. 39.

\* By 33 Geo. 3. c. 66. s. 32., in case the sentence of any Court of Admiralty or Vice-Admiralty concerning any ship or goods seized as prize shall be finally reversed after sale of such ship or goods, pursuant to the directions in that act contained (in sect. 31.), the net proceeds of such sale (after payment of all expenses attending the same) shall be deemed to be the full value of such ship and goods,

and the parties appellate and their securities shall not be answerable for the value beyond the amount of such net proceeds, unless it shall appear that such sale was made fraudulently, or without due care. This act expired with the war which gave rise to it. The above provisions are re-enacted in sect. 41. of 55 Geo. 3. c. 160., the latest Prize Act, which, however, expired with the last war.

104. Condemnation of a vessel in a Vice-Admiralty Court having been reversed on appeal, the insurance of the ship by the captor not unnecessarily effected, allowed to him. *The Malta, Young*, 2 Hagg. 162.

105. A ship and cargo having been sent on to England by order of the Vice-Admiralty Court of Bermuda for sale pursuant to 41 Geo. 3. s. 9., the expenses incurred by the captors, attending the providing securities, insurance on ship, cargo, and freight, together with commission on effecting insurance, and on purchase of exchequer bills, allowed as a charge on the property. *The James and William, Pollard*, 1 Acton, 337.

## 2. Over what claims preferred.

106. A ship was restored as neutral property, with freight and expenses decreed to be a charge on the cargo, and the cargo was condemned for want of further proof. The freight was paid out of the proceeds of cargo, but the remaining proceeds were insufficient to defray the captor's expenses, and those of the neutral master also: *Held*, that the captor was entitled, with respect to his expenses, to a priority over the neutral master. *The Bremen Flugge, Meyer*, 4 C. Rob. 90.

## 3. Costs of—where given—et contra.\*

107. Although captors have made a justifiable seizure, they may still forfeit their title by subsequent misconduct. Costs of captors in such a case refused, on the ground of their having attempted to introduce evidence irregularly taken, and liable to the suspicion of having been unduly obtained. *The Speculation, Feroe*, 2 C. Rob. 296.

108. In a case in which, on further proof, the captors had consented to restitution, application by them for the allowance of their costs refused, on the ground that they had not obeyed a monition of the Court below to bring in the proceeds, which were still in their agent's hands, and an attachment decreed against the agents. *The Eliza, Burrough*, 1 Acton, 336.

109. In a case of restitution by consent, demurrage applied for and decreed by the Court from the time of ship's papers being brought in to the period of restitution, no satisfactory explanation of the delay (two months and twenty days) being given by captors, but costs and damages, as also captors' expenses, refused. *The Zee Star, Muller*, 4 C. Rob. 71.

## CAPTURE.†

### I. OF THE JURISDICTION OF COURTS AS TO —

#### II. WHAT AMOUNTS TO — ET CONTRA.

#### III. WHEN COMPLETED — ET CONTRA.

### IV. WHERE BARRED — ET CONTRA.

See CAPTORS, DROITS OF ADMIRALTY, JOINT CAPTURE, PRIZE, RECAPTURE, SLAVE TRADE.

### I. OF THE JURISDICTION OF COURTS AS TO —

1. Where there is a false capture of goods at sea, the Admiral has jurisdiction; but if they be brought to land, the common law has equal authority, and the cause may

be brought in either Court at the plaintiff's election. *Anon.* (1690), 12 Mod. 16.

#### II. WHAT AMOUNTS TO — ET CONTRA.

2. It is not essential to constitute a capture, or such an one as to give occasion to

\* *Note.* The refusal or allowance of captor's expenses has been added to each particular case with reference to which such an application was made on behalf of captors.

† 1. The acts of subjects done under the orders of their sovereign are not cognisable by foreign courts. If such acts be a violation of neutral rights, the only remedy is by an appeal to the sovereign or by a resort to arms. *Maisonaise et al. v. Keating*, 2 Gallison's (AMERICAN) Rep. 334.

2. A capture, therefore, under the Berlin and

Milan decrees, or the celebrated Orders in Council, although they might be violations of neutral rights, must still have been decreed, as to the captors, a rightful capture, and to have authorized the exercise of all the usual rights of war. It is quite another question, however, whether a tribunal of prize would lend its aid to enforce such captures, though perhaps in the strictness of national law it would be bound to abstain from all obstruction of the captors. *Ibid.*

a re-capture under the Prize Act, that the enemy should have taken actual possession. *The Edward and Mary, Tilly*, 3 C. Rob. 305.

3. Captures held to be effectual where no men were put on board, but the prize only compelled to steer in the direction prescribed by the captor. *The Hercules, Chitty*, 2 Dodson, 363.

4. An act of taking possession is not indispensably necessary to a capture; an obedience to a hostile attack or hostile force is sufficient. *La Esperanza*, 1 Hagg. 91.

5. The attack of, and compelling an enemy's ship to run into the port of an ally, *Held* to amount to a capture. *Ibid.*

*See Captors, cap. III. and IV.*

### III. WHEN COMPLETED — ET CONTRA.

6. The time of striking the colours is to be deemed the real *deditio*. *The Rebeckah, Thompson*, 1 C. Rob. 233.

7. A vessel having been seized at Barbadoes by the captain of a King's ship, who shortly afterwards returned the ship's papers, with an intimation to the master that it might not be amiss for him to ac-

company with his vessel the King's ship to Antigua. The vessels having set out in company, and bodily possession being taken by the seizor on the following day, *Held* that the seizure made at Barbadoes was continued throughout, and that the assumption of possession was not a fresh seizure, the vessel never having been set at liberty. *The Hercules, Chitty*, 2 Dodson, 363.

### IV. WHERE BARRED — ET CONTRA.

8. Restitution after a first seizure does not bar a second by another party, though, if judicially recorded, it would bar the first seizor; but whoever ventures on a second seizure must do so under the peril of costs and damages. After a seizure and restitution by the first captors, a second seizure was made by officers of the Admiralty instituting new proceedings. Appearance under protest to such second seizure overruled. *Semble*, that the King is not to be considered as the original captor, because he is the fountain of all prize. *The Mercurius, Gerdes*, 1 C. Rob. 80.

9. A second seizure is not barred by an abandonment of a former one. *The Woodbridge, Munnings*, 1 Hagg. 74.

## CARGO.\*

1. Cargo in a perishable state on board a prize directed, with consent of both parties, to be sold and deposited, to abide adjudication. *The Bonaventura, Hay & Marriott*, 235.

2. There is this distinction between a sale of cargo and an hypothecation of it: only a part can be sold, because the express purpose of the sale is to enable the remainder to go forward; but the whole

may be hypothecated. *The Gratitude, Mazzola*, 3 C. Rob. 263.†

3. The authority of the master to sell the cargo depends on the same principles as his authority to sell the ship. Such a sale by the master, though acting *bond fide*, but without a sufficient necessity, would be invalid. *Freeman v. E. I. Company*, 1 D. & R. 234., 5 B. & A. 617., Abb. Sh. 11.‡

\* 1. Pieces of wood placed against the sides and bottom of the hold to preserve the cargo from the effects of leakage, according to its nature and quality, are called dunnage. *Abb. Sh.* 346.

† 2. The sale of a part of the cargo has been allowed in a case in which the hypothecation of the whole would have been lawful, and because it was considered as equivalent to such hypothecation. *Ibid.* 366. 372.

‡ 3. As to the validity of a sale of cargo by the master in cases of distress, see *Freeman v. E. I. Company*, 1 D. & R. 234., 5 B. & A. 617.; *Akers v. Tobin*, Abb. Sh. 256.; *Wilson v. Miller*, 2 Stark. 1.; *Joseph v. Knox*, 3 Camp. 332.; *Van Omeron v. Dowick*, 2 Camp. 42.; *Campbell v. Thompson*, 1 Stark. 490.

4. Where the master of a Peruvian vessel bound from Lima to London had sold some silver, part of the homeward cargo, at Bahia, to raise funds for repairing the ship, the Court of Admiralty refused to entertain a claim by the consignees of the silver to share rateably in the proceeds of the ship, freight, and part of the cargo brought into the registry to answer demands of bottomry, wages, pilotage, and towage. *The Constanca*, 4 Notes of Cases, 677.

5. Where property is so sacrificed it is a subject of general average, but the Court of Admiralty, administering the ordinary maritime Law of Nations, has not jurisdiction to entertain questions of general average, or power to adjudicate thereon. *Ibid.*

4. Where the original contract of affreightment has been determined by the payment of freight *pro rata itineris*, the conveyance of the cargo to its ultimate destination belongs to the cargo only. *The Copenhagen, Mening*, 1 C. Rob. 293.

5. Where the unloading of the cargo was for the common benefit of both ship and cargo, it being necessary to unload the ship as well for its own repair, which had become indispensable, as for the preservation of the cargo, the expense of unloading seemed to have upon it the character of a general average; but if the cargo were merely shipped for its own preservation, it would seem to belong to the cargo only to bear the expense of it. *Ibid.*

6. The right of war is a right *in re*; and the Court of Prize accordingly attends only to the *res ipsa* and the *onera* attaching on the property in right of possession. The cargo has not, in any manner, a right of possession against the ship. It may have the *jus in rem*, but it has not the *jus in re*, and consequently no right of detention existing at the time of seizure; therefore a demand for average against a neutral ship decreed to be restored, made by the captors in right of the cargo (which had been condemned), on the ground of part of the cargo having been applied to the repairs of the ship prior to the seizure, pronounced against. *The Hoffnung, Hardrath*, 6 C. Rob. 383.

7. On the capture of ships laden with a cargo of mixed goods, some of which are fit for the Government service, the Navy Board have the right of pre-emption of such goods; and in order to reconcile neutrals to the exercise of this right, and to prevent the inconvenience arising from a separation of the cargo, it is thought advisable to purchase the other part of the goods on board. *The Jonge Jan, Schnil*, 1 Dodson, 458.

8. The act of the principal owners of cargo, authorizing an hypothecation thereof by the master, *Held* binding on the other owners of cargo. *The Rhadamanthe, Meyer*, *Ibid.* 208.

9. A master is not bound to tranship the cargo because he might have done so in preference to taking up money on bottomry for the ship's repair; nor would a bottomry bond be invalid because he might have, but had not, done so. *The Lord Cochrane*, 8 Jur. 716.

10. An application to take a cargo on bail, before adjudication, is not granted in the Prize Court but upon consent of the captors. *The Copenhagen, Mullens*, 3 C. Rob. 178.

*Of the hypothecation of—*  
*see* BOTTOMRY, *cap. XVII.*

*Of the duties of the master*  
*as to—see* MASTER.

*See* MERCHANDIZE.

## CARTEL.

### I. GENERAL CONSIDERATIONS AS TO—

#### II. OF THE PRIVILEGES OF—

##### 1. *Vessels where entitled to—et contra.*

#### 1. GENERAL CONSIDERATIONS AS TO—\*

1. The privileges and immunities of cartel ships are of a very sacred nature, and

#### 2. *What acts will work a forfeiture of—et contra.*

### III. MISCELLANEA.

are to be received with great respect, inasmuch as they tend very beneficially to mitigate the miseries of war, and to facilitate the return of peace. *The Carolina, Verhage*, 6 C. Rob. 336.

\* 1. A cartel ship is *pro hac vice* a neutral licensed vessel, and all persons concerned in her navigation upon the particular service in which both belligerents have employed her are neutral in respect to both, and under the protection of both. *Crawford et al. v. The William Penn, Peters' (AMERICAN)* Circ. C. Rep. 106.

2. All contracts made for equipping and fitting cartel ships for that particular service are to be considered as contracts made between friends, and consequently ought to be enforced in the tribunals of either belligerent having jurisdiction of the subject. *Ibid.*

2. The actual existence of war is not necessary to give effect to contracts for the employment of vessels as cartel ships. It is sufficient if they are entered into prospectively, and in expectation of approaching war. *Ibid.*

3. The employment of a vessel to which the privilege of a cartel is allowed, is for the mutual exchange of prisoners of war, and can have place between belligerents only. *The Rose in Bloom, Olcott*, 1 Dodson, 60.

4. Cartel ships are, on general principles, to be protected in their office *ad eundem et redeundem*, both in carrying prisoners and returning from that service. *The Daifjie, Soaring*, 3 C. Rob. 141.

## II. OF THE PRIVILEGES OF —

### 1. Vessels where entitled to — *et contra*.

5. Where vessels claiming to be cartels had no certificate of such character on board, but appeared to be *bond fide* on a voyage for the purpose of bringing prisoners, *Held*, that they ought not to be condemned. Captors' expenses allowed. *The Daifjie, Soaring*, 3 C. Rob. 139.

6. Where a cartel appears to have been employed in the public service, and for purposes of national utility, that circumstance alone will entitle it to be considered as an engagement sanctioned by the public Councils of the State. *The Carolina, Verhage*, 6 C. Rob. 337.

7. The privileges of cartel would attach where the vessel was employed as such in execution of a treaty of peace, and conformably to orders of Government, for the purpose of carrying the stipulations of the treaty into effect. *Ibid.* 338.

8. A cartel appointed in time of peace, but in contemplation of war, by an officer in the East India Company, and subsequently confirmed by officers of the Crown, and employed in carrying into effect the stipulations of a treaty, but captured on hostilities supervening, *Held* to be entitled to the privileges of that character. Restitution accordingly. *Ibid.* 336.

9. The privileges of cartel allowed to ships employed to carry, from Martinique to France, certain French prisoners taken at St. Lucie, agreeably to the intentions of the British General in giving the prisoners leave to depart, though the ship was not strictly provided with the formal documents of cartel. *La Gloire, Limousen*, 5 C. Rob. 192.

10. In general when a ship claims to be going as a cartel, the nature of the vessel does not appear to be of consequence. *The Daifjie, Soaring*, 3 C. Rob. 139.

11. A ship going to be employed as a cartel ship is not protected by mere intention on her way from one port to another of her own country, for the purpose of taking on herself that character when she arrives at the latter port. If such a necessity occurs, it is proper to apply to the commissary of prisoners in the enemy's country for a pass. *Ibid.* 143.

12. The employment of a vessel in a transaction by a neutral state, *Held* not to be of a nature entitling her to the privilege of a cartel. *The Rose in Bloom, Olcott*, 1 Dodson, 60.

### 2. What acts will work a forfeiture of — *et contra*.

13. Cartel ships have no right to trade or take in a cargo, and the doing so subjects the vessel to confiscation. Condemnation accordingly. *The Venus, Rosdale*, 4 C. Rob. 355.

14. A cartel appointed in time of peace, but in contemplation of war, and which, in accordance with the stipulations of the cartel contract, took on board a cargo at an intermediate port after the breaking out of hostilities, *Held* not to have forfeited her privileges of a cartel thereby. Restitution of ship and cargo accordingly, save as to some few articles subsequently taken on board, and as to which no proof of property was adduced. *The Carolina, Verhage*, 6 C. Rob. 337.

## III. MISCELLANEA.\*

15. Tin plates for canister shot put on board a cartel ship by a British manufac-

\* 3. An alien enemy holding a bottomry bond upon a cartel ship for the purpose of enabling her to perform her voyage and bring prisoners, may enforce such bond in the Admiralty Courts of the country to which the vessel belongs, for such vessel is *pro hac vice* a neutral licensed vessel, and all

persons concerned in her navigation, upon the particular service in which both belligerents have employed her, are neutral in respect to both, and under the protection of both. *Crawford et al. v. The William Penn, Peters'* (AMERICAN) Circ. C. Rep. 106.

turer at Dover condemned as droits of Admiralty. *La Rosine*, 2 C. Rob. 372.

16. Persons put on board a cartel with their own consent, by the government of the enemy, to be carried to their own country, are bound to do no act of hostility. Therefore a capture made by such persons of a vessel of their own country from the

enemy, is not a recapture in contemplation of law, and gives them no title to salvage, and the former owner no title to claim the vessel. Property so recovered decreed to be given up to the disposal of the Crown. *The Mary, Folger*, 5 C. Rob. 200.

### CHARTER-PARTY.

1. *Quere*, how far might a charter-party be avoided by an act of the ship-owner? The obligations thereof may be relaxed upon emergency. *The Tartar, Tharp*, 1 Hagg. 6.

2. The patent of the Judge of the Vice-Admiralty Court of the Cape of Good Hope authorizes him to take cognizance of charter-parties. *The Elizabeth, Lisboa*, 1 Hagg. 226.

### CINQUE PORTS.\*

1. A whale discovered by some fishermen three miles from the shore, and towed by them on to Whitstable beach, *Held* to belong to the Lord Warden of the Cinque Ports, as found and taken within his jurisdiction, and not to the Commissioners for executing the Office of Lord High Admiral of England, on the ground that the Crown was entitled to the whale as a royal fish, and that having apparently from the patents of both functionaries granted such rights to both the claimants, the grant to

the Lord Warden, as being held to be the more ancient office of the two, excluded the like grant to the Lord High Admiral. *The Lord Warden of the Cinque Ports v. The King in his office of Admiralty*, 2 Hagg. 438.

*As to the jurisdiction of the Lord Warden, his Court and officers within the Cinque Ports, over pilots — see PILOTS; and in cases of Salvage and Wreck — see SALVAGE, WRECK.*

### CLAIMANTS.

I. IN OPPOSITION TO THE DEPOSITIONS AND SHIP'S PAPERS.

II. IN CASES OF CAPTURE OF ALGERINE PROPERTY.

III. OF THE ONUS OF PROOF TO BE SUSTAINED BY —

IV. OF THE RIGHTS OF —

1. *Generally.*

2. *How barred — et contra.*

V. MISCELLANEA.

See NEUTRALS.

I. IN OPPOSITION TO DEPOSITIONS AND SHIP'S PAPERS.

1. The general rule is, that no claim shall

be admitted in opposition to the depositions and ship's papers, but this rule admits of some exceptions, as where the vessel belongs to a British subject or an ally in the

\* 1. The Cinque Ports are Dover, Sandwich, Romney, Hastings, and Hythe, and the two ancient towns are Winchelsea and Rye. Their jurisdiction may in general terms be said to extend from Seaford, along the coast of Sussex and Kent, towards

the Thames. The precise limits are accurately defined in the 18th sect. of 1 & 2 Geo. 4. c. 76.

2. The barons of the Cinque Ports claim to be wreck free by charter of *Edw. 1., Plac. t. E. L., Palmer on Wreck*, 38.



war, and is driven to the disguise to elude the restrictions of the enemy. *La Flora, Klein*, 6 C. Rob. 3., and note in index to that volume, p. 3.\*

2. Where a claim is admitted to be proved in opposition to the depositions and ship's papers, the claimant must show to the satisfaction of the Court, that the disguise did not originate in attempts to avoid or defraud the regulations of this country. *The Aurora*, 22d March, 1808, cited in Index to 6 C. Rob. p. 3.

3. The rule against the admission of claims of neutrals for cargo in enemy's bottoms, and which stand in entire opposition to the papers and to the preparatory examinations, is not applicable to cases arising before the war. *Vreede Scholtys, note to The Vrow Elizabeth, Probst*, 5 C. Rob. 5. Such a claim admitted, leave being given to show the particular nature of the contract. *The Vrow Anna Catharina, Mahts*, 5 C. Rob. 19.

See FURTHER PROOF,  
cap. V. sect. 3.

## II. IN CASES OF CAPTURE OF ALGERINE PROPERTY.

4. A claim admitted on behalf of the Danish government for Algerine property taken under the Danish flag, the Dey having exacted payment from the Danish consul. *The Kinder's Kinder, Haysen*, 2 C. Rob. 88.

5. A similar claim on behalf of the American government for Algerine property refused on account of the manner in which the American flag had been used. *The Fortune, Smith*, Ibid. 92.

6. Ship and cargo claimed by Moorish subjects, restored on further proof. *The Annemur, Sarrey*, 3 C. Rob. 71.

## III. OF THE ONUS OF PROOF TO BE SUSTAINED BY —†

7. Claimants for restitution of a vessel captured have the duty of plaintiffs imposed on them, i. e. the *onus* of making out their case. *The Charlotte, Avery*, 1 Dodson, 213.

8. The Court will lean to a defendant and against a claimant who could and ought to have proceeded immediately and ne-

glected doing so for four years, in consequence of which the defendant's witnesses (a man-of-war's crew) could not be obtained. *The John, Beck*, 2 Dodson, 338.

## IV. OF THE RIGHTS OF —

### 1. Generally.

9. The general rule is, that a person unjustly deprived of his property is entitled to full restitution, with costs and damages; but this rule is subject to modification, as where the claimant has given occasion by his conduct to the capture, &c. in which case he is entitled only to simple restitution. *The Acteon, Rogers*, 2 Dodson, 52.

10. When restitution of prize property is decreed, if the cargo be deficient, measured by the invoice, from the embezzlement of the captors, they must make it good. If it be not in their hands at the time compensation is sought, but in the hands of Commissioners of the Government, the claimant may seek his restitution directly of the Commissioners, and they must look to the captors. *The Concordia, Bayzard*, 2 C. Rob. 102.

11. The Crown or the captor is not to regard latent remote claims of third parties, arising on foreign transactions, such as bottomry, &c., but it takes *cum onere*, though not *cum onere universali*, and succeeding by capture to the rights of the owners of ship and cargo, succeeds also to the obligations of those parties against each other, arising out of the immediate transaction. *The Constantia Harlessen, Knudson*, Edwards, 232.

See AMELIORATIONS, CAPTORS, COSTS AND DAMAGES, DEMURRAGE, FURTHER PROOF, RESTITUTION.

### 2. How barred — et contra.

12. A claimant is barred in the Prize Court by the illegality attaching to his acts from municipal law. A British packet was retaken from the enemy, and the cargo was claimed as the property of British and Portuguese merchants. By the 13 & 14 Car. 2. c. 22. the carrying of a cargo was prohibited to such vessels. *Held*, that the

\* 1. An exception in favour of such cases is to be found so far back as the decisions of the Court of Session in Scotland in 1673, in the case of *The Liveday*, 2 Stair's Decisions, 229., and *Clerk v. Smeeton*, Ibid. 241.

† 2. It is a settled rule of the Prize Court that the *onus probandi* of a neutral interest is on the claimant. *The Amiable Isabella*, 6 Wheaton's (AMERICAN) Rep. 1.

Prize Court would take notice of the breach of a municipal law by the claimant, and not restore that property, happening to fall into the hands of a British captor, which, by the claimant's own showing, appeared to have been employed in an illegal trade. *The Walsingham Packet, Bell*, 2 C. Rob. 77.

13. After acceptance of such an extrajudicial release as an order of the Government before adjudication to release the asserted prize, the claimant would no longer be competent to proceed against the captor, the act of acceptance being a waiver of his judicial remedy. The captor might appear under protest to any such proceedings of the claimant, and the Court would sustain the protest, or else permit him to proceed, not for the adjudication of any prize interest under the seizure, but for all purposes of justification. *The Elsebe, Maas*, 5 C. Rob. 190.

14. The intervention of hostilities puts the property of the enemy in such a situation that confiscation may ensue, but unless some step is taken for that purpose, unless there is some legal declaration of the forfeiture to the Crown, the right of the owner revives. Right of neutral claimant under a decree of costs and damages suspended by the breaking out of hostilities, during which no proceedings for the forfeiture thereof were taken, *Held* to revive on the cessation of hostilities, and the country of the claimant becoming an ally. *The Nostra Senora de los Dolores, Morales*, Edwards, 60.

And see ALIENS, cap. III.

#### V. MISCELLANEA.\*

15. A claimant of part of cargo, who was unable to specify the name of the person for whom he claimed, applied to the Court for permission to inspect the papers and to receive his claim; the Court directed the claim to be received *de bene esse*, and permitted the party to inspect such papers only as might relate to that claim. *The Port Mary, Collins*, 3 C. Rob. 233.

16. Restitution had passed in *solidum* of three-fourths of the property claimed to an American house of trade. Afterwards it appeared that one of the parties was an English merchant and a bankrupt. His assignees prayed a severance of his particular share to be paid to them as his re-

presentatives, for the benefit of his creditors. The Court refused it, as no part of the duty of the Court of Admiralty, saying that the petitioner must resort to some other authority to make the discrimination between this American partnership stock, for the purpose of subjecting a particular share to a British bankruptcy. *The Jefferson, Dennis*, 1 C. Rob. 325.

17. The ship and the several portions of cargo having been each specifically claimed as the property of various individuals, the Court refused to entertain a subsequent claim of another party for the ship and cargo. *The Little William, Brown*, 1 Acton, 148.

18. On an order for further proof, the claimant is entitled to his property on bail. *The Anna, La Porte*, 5 C. Rob. 384.

19. Where property, whether in the Prize or Instance Court, in a case of capture or salvage, is delivered on bail to the claimant, he is bound on the one hand by the appraised value, and cannot be called upon on the other hand to bring in more than the appraised value. *The Betsey, Winpenny*, Ibid. 295.; *The Jonge Bastiaan, Steyting*, Ibid. 322.

20. So, too, he cannot be allowed expenses attending the property after it is delivered to him on bail. *The Betsey, Winpenny*, Ibid. 295.

21. Where property has been seized by a commissioned ship-of-war, either public or private, it is *de facto* under the joint locks of the King and the captor, although in the legal possession of the Marshall, according to the tenor of his writ. In the case of a *droit*, where the King in his office of Admiralty is the captor, it is under his locks alone. If an order come for the release of that property, either on bail or for restitution, it is to be released to the party claiming, at the expense of the party who releases. The King's ship, the private ship-of-war, and the Admiralty, are equally bound to execute such an order, which is performed in the two former cases by the agent of the captor's, and in the case of the Admiralty by their officer, the Marshall. The expense of the release is no charge on the cargo, unless the captor's expenses are decreed as a charge on the cargo. *The Rendsborg, Nyberg*, 6 C. Rob. 174.

\* 3. See form of claim and affidavit in support thereof in 2 C. Rob. Appendices 4. and 5.

4. Where a claim is rejected in a prize cause, the claimant is liable to pay all expenses which

have accrued in consequence of his claim; but not such as arise in the cause independently of it. *The Sally and Cargo*, 1 Gallison's (AMERICAN) Rep. 414.

## COLOURS.\*

## I. STATUTORY REGULATIONS WITH REGARD TO —

## I. STATUTORY REGULATIONS WITH REGARD TO —

1. By 8 & 9 *Vict. c. 87. s. 10.* none of her Majesty's subjects are to hoist in their vessels the Union Jack, or any pendants, &c. usually worn in her Majesty's ships, and prohibited to be worn by the King's proclamation of 1st January, 1801†; and the master or other person having charge of any such ship or boat, or the owners thereof, if on board the same, and any other person so offending, shall forfeit a sum not exceeding 500*l.*, to be recovered, with costs of suit, in the High Court of Admiralty of England, or in any Vice-Admiralty Court in the colonies, or in her Majesty's Court of Queen's Bench or Exchequer at Westminster or Dublin; and any officer of the Navy, or of the Customs or Excise, may enter any such ship, and seize and take away any such colours, and the same shall thereupon become forfeited.

## II. CASES OF PROCEEDINGS AGAINST MASTERS OF PRIVATE SHIPS FOR HOISTING ILLEGAL COLOURS.

2. The colours of King's ships are not to

## II. CASES OF PROCEEDINGS AGAINST MASTERS OF PRIVATE SHIPS FOR HOISTING ILLEGAL COLOURS.

be worn by private ships-of-war or merchantmen. The offence is a contempt. A warrant of arrest against the master of a private ship-of-war, to answer articles touching such an offence, granted as a warrant of course. *The Minerva, Rickstock*, 3 C. Rob. 34.

3. Proceedings against the master of a merchant vessel for hoisting illegal colours instituted by the Admiralty proctor, by the direction of the Lords of the Admiralty. *The King in his Office of Admiralty v. Miller*, 1 Hagg. 197.

4. Motion for warrant of arrest to be served at Dublin on the master of a merchantman for hoisting illegal colours in an English port, the master having removed to Dublin after the institution of the suit, granted, and warrant decreed accordingly. *Ibid.*

5. A master of a British merchant vessel condemned in the penalty of 50*l.*, under stat. 6 *Geo. 4. c. 108.* (now repealed, but see 8 & 9 *Vict. c. 87.*) and costs, for wearing illegal colours. Monition against him to pay same to his Majesty in his office of Admiralty decreed. *The King v. Benson*, 3 Hagg. 96.

## COMMISSIONERS.

1. Commissioners of appraisement and sale are merely ministerial officers of the Court, deriving all their authority therefrom, and from no other source. They are not the agents of the persons that recommend them. *The Princessa, Zavala*, and *La Reine, Elizabeth*, 2 C. Rob. 34.

2. The Court may, for its own convenience,

accept the recommendation by the parties of commissioners, but it is in no degree bound to do so. It is at the option of the Court whether it will grant any commission or not, and to whom it will grant it. It may revoke commissioners, though approved by the party, or continue a commissioner in office, though against

\* 1. Cases of wearing illegal colours are within the jurisdiction of the Court of Admiralty, but they are not of frequent occurrence. It generally happens that when a complaint is made against the master of a vessel for wearing illegal colours, the complaint is forwarded to the Lords of the Admiralty, who send instructions to their proctor to proceed against him, which generally produces a

memorial to the Lords of the Admiralty, and where fair grounds are stated as an excuse or in palliation of the offence, the penalty is not sued for, but in other cases which call for punishment, they are proceeded in and the penalty exacted. *Evidence of Sir Herbert Jenner before the Select Committee of the House of Commons on Admiralty Courts*, p. 35.

† See the proclamation in the Appendix.

the approbation of the party. They are to account to the Court, and not to the persons who recommend them. *Ibid.*

3. With regard to the interest of commissioners the Court might, in the first instance, assign the proportion of payment at the time of appointment, and might enlarge or otherwise alter it afterwards, as it should think proper, according to the circumstances of the case; but by courtesy it has been usually otherwise, and to prevent disputes, and to suit the general convenience and wishes of the parties, it has been usually left to them to agree on their own terms, usually a per centage; but when that agreement has been made, the parties are strictly bound by it, and the commissioners are not allowed to make any advantage beyond that per centage. *Ibid.*

4. The duties of commissioners are, according to the terms of their appointment, to reduce into writing a full, true, and perfect inventory of the ship and cargo, to choose two good and lawful men, well experienced in such affairs, and swear them faithfully and justly to appraise the same according to their true values, to cause the said ship and cargo to be exposed to public sale, to sell or cause the same to be sold to the best bidder, and to bring or cause to be brought the produce money arising from such sale into the registry of the Court before a certain day. *Ibid.* 36.

5. If difficulties arise in the execution of their office, they are to resort to the Court, and in due time, not waiting until the business is concluded. If the interests

of the Crown are affected, they should apply to the Crown officers of the Court, and act under their directions with respect to the Crown's property. *Ibid.* 37.

6. The Marshall, or any other person undertaking a commission, incurs all the responsibility belonging to a prudent and honest execution of that commission, but the responsibility is limited to the exercise of common prudence and common integrity, notwithstanding which, if a loss occur, the commissioner is not responsible, but only for *dolus* or *negligentia dolo proxima*. *The Rendsborg, Nyberg*, 6 C. Rob. 155.

7. Prize commissioners, when the depositions have been taken and transmitted, are not to go on examining witnesses afterwards. *The Speculation, Feroe*, 2 C. Rob. 295.

8. In the High Court of Admiralty the commission to examine witnesses runs jointly and severally, and if one commissioner absents himself, the other proceeds alone. *The Ceres, Shew*, 3 C. Rob. 128.

9. In a case of re-capture, it appearing, in the course of the proceedings, that the commission for appraisement and sale had not been returned for two years, a monition directed to issue with an attachment embodied against the commissioners and at their expense. *The Fortuna, Gerrits*, 4 C. Rob. 78.

10. The allowance to commissioners at the outports for an unlivery for the purpose of appraisement is one guinea a-day for each commissioner. *The Rendsborg, Nyberg*, 6 C. Rob. 171.

## CONSULS.\*

1. The carriage of despatches by a neutral from a hostile port to a consul of the enemy resident in a neutral country is not a ground of condemnation. Restitution accordingly, but with captor's expenses. *The Madison, Frost, Edwards*, 274.

2. A consul of a neutral state resident

in the enemy's country is subject to all the disabilities of an enemy merchant, as to the power of becoming a claimant in the Court of Admiralty; but he is not on that account necessarily disabled from introducing evidence before the Court, for the alien enemy is not generally disabled as a

\* 1. On the office, duties, and privileges of British consuls, see *Fynn's British Consul's Handbook* (anno 1846).

2. It is the duty of a British consul to claim and recover all wrecks, cables, and anchors belonging to British subjects, to pay the usual salvage,

and report a communication thereof to the Trinity Board. *Ibid.* 14. and 51.

3. A British consul is empowered to administer oaths in all cases, in like manner as if he were a magistrate of the place to which he is appointed. *Ibid.* 14.

witness, and the cases of exception are few. *The Falcon, Atkins*, 6 C. Rob. 197.

3. A consul abroad, plaintiff in a suit, need not give security for costs. *Colebrooke v. Jones*, 2 Ves. 154.

See *ALIENS, cap. III. sect. 4. div. (a)*; *NATIONAL CHARACTER, cap. II. sect. 2. div. (c)*.

## CONTEMPT.\*

1. By the 3 & 4 Vict. c. 65. s. 21. the Judge of the Court of Admiralty is empowered to order the discharge of any prisoner in custody for contempt of Court (except in respect of non-payment of costs), on such conditions as to him shall seem meet; but such order shall not, unless the conditions thereof are complied with, be deemed to purge the original contempt.

2. Whatever is done *personally* by the party principal in the cause requires in strictness a *personal* service of the notice or decree for doing it upon the party principal. Hence the service of a decree for answers on the proctor will not justify the Court in putting the principal in contempt, if those answers are not brought in. *Durant v. Durant*, 1 Add. 114.

3. Whoever obeys unlawful commands must take the consequences. *The Petrel, Russell*, 3 Hagg. 304.

4. An insane person cannot be guilty of contempt, so as to be legally responsible. *Barlee v. Barlee*, 1 Add. 306.

5. Contempts of Court are usually incurred by a party's neglect or refusal to do some act which is, in justice, due to the other party in the cause, such as the giving in of answers, the payment of costs, or the like; and the imprisonment which follows is at the prayer of the other party—a prayer to which the Court cannot refuse to accede without a breach of its duty, and a denial of justice. *Barlee v. Barlee*, 1 Add. 304.

6. All parties conspiring to carry off a vessel in the custody of the officer of the Court of Admiralty are guilty of contempt. Such contempt is not confined to those who actually carried off the vessel, but includes all who were privy to, and assisted

in, the transaction. *The Petrel, Russell*, 3 Hagg. 301.

7. Warrant of arrest issued against the master of a British merchant vessel for contempt in passing one of his Majesty's ships without striking topsail. *The King v. Benson*, 3 Hagg. 97. n.

8. A party not giving in his answers on the day of the return of a decree personally served will be pronounced contumacious. *Similiter*, a witness not appearing to a compulsory. *Wyllie v. Mott and French*, 1 Hagg. (Eccl.), 33.

9. Pending proceedings in the Court attacks on the plaintiff and his witnesses were published representing those proceedings as vexatious, and that the witnesses had in their evidence been guilty of perjury: *Held*, that this, being calculated to disturb the free course of justice, was a contempt of Court. *Little v. Thomson*, 2 Beav. 129.

10. A defendant cannot object to a cause being heard on the ground that the plaintiff is in contempt. *Ricketts v. Mornington*, 7 Sim. 200.

11. An Ecclesiastical Court will not refrain from enforcing its order in consequence of the party who has obtained the same being in contempt of the Court of Queen's Bench, and resident out of the country, to evade the process of that Court. *Greenhill v. Greenhill*, 1 Curteis, 466.

12. Contempt of Court for non-payment of costs cannot be (*semble*, involuntarily) waived by the parties. *Gompertz v. Best*, 1 Y. & C. 619.

See *ADMIRALTY, cap. IV. sect. 4.*; *APPEALS, cap. IV. sect. 3., cap. V.*; *ATTACHMENT*; *COLOURS*.

\* 1. The Court of Admiralty may fine and imprison for a contempt in the face of the Court.

3 *Stephens' Black. Comm.* 727., and see *Sparks v. Martyn*, 1 Ventr. 1.

## CONTINUITY OF VOYAGE.

1. Where the original voyage which a vessel is pursuing is illegal, a compulsory deviation caused by a *vis major* does not alter the character of such voyage. *The Minerva, Andaulle*, 3 C. Rob. 229.

2. In time of war, property cannot be legally transferred and changed *in transitu*. In a case of transshipment, an asserted importation *Held*, notwithstanding a fact of sale, not to have been a *bona fide* importation. Condemnation. *Carl Walter, Schmidt*, 4 C. Rob. 207.

3. The putting into a British port for the purpose of obtaining a licence for a voyage which, without it, would have been illegal, *Held* to break the continuity of such otherwise illegal voyage. *The Mercurius, Harmens*, Edwards, 53.

4. Property of a British subject shipped to go to the enemy, but through a neutral country, or with an intermediate neutral port, *Held* liable to condemnation, as being a circuitous trading with the enemy. *Jonge Pieter, Musterdt*, 4 C. Rob. 83.

5. The right of trading from ports of one country to those of another would not be affected by a transshipment in an intermediate port; and *semble* where no such right existed. *The Matchless, Vint*, 1 Hagg. 106.

6. The mere touching at an intermediate port, whether of the country to which the vessel belongs or any other, without importing the cargo into the common stock of that country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering the cargo at the ultimate port. *The Maria, Jackson*, 5 C. Rob. 365.

7. Where the destination is not to the mother country of the colony, it may not make a different rule of law applicable; but as evidence of intention, it has some weight. *Ibid.*

8. A neutral ship sailed with a cargo from an enemy port for a neutral port, at which she stopped only three days for fresh papers; and without unloading any part of her cargo, which purported in such papers to have been there laden, then proceeded to another port of the same enemy, on which voyage she was captured: *Held*, that such a transaction was a continuous

voyage in the coasting trade of the enemy, notwithstanding the colourable interposition of the neutral port. *The Ebenezer, Christensen*, 6 C. Rob. 250.

9. In a case on the continuity of a voyage from the colony of the enemy to the mother country landing and payment of import duties, though a strong ground for presumption of an intention to import, is not conclusive evidence of importation sufficient to destroy the continuity of the voyage. *The William, Trefry*, 5 C. Rob. 385.

10. On the question of the legality of a voyage, the mere transshipment and sale of a cargo at an intermediate port does not break the continuity of a voyage, which can only be effected by a previous actual importation into the common stock of the country where the transshipment takes place. Condemnation as for a continuous voyage between enemy ports. *The Thomyris, Russell*, Edwards, 17.

11. On appeal from a condemnation of ship and cargo in the Vice-Admiralty Court of Jamaica, for illegal importation from America into that island, decision affirmed, but without costs, notwithstanding a transshipment at an intermediate port (from whence an original importation would have been legal), such transshipment being held to be colourable only. *The Eliza Ann, Freeman*, 1 Hagg. 257.

12. The Order in Council of September, 1803, directing the restitution of cargoes of Spanish wool bound to ports of this country, *Held* not to apply to such a shipment ostensibly, and according to the private understanding of the shippers, to a neutral port, though they had given the master private directions to come to a port of this country, he having sworn that at the time of capture he intended to proceed, and was proceeding, to the neutral port, pursuant to his papers. On proof that the shippers had given instructions to their consignees at the neutral port, that in the event of the master bringing the vessel there, the cargo should be carried on in the same or another ship to this country, *Held* that such a circuitous ulterior destination could not be considered in law as one identical consignment. Claim rejected. *La Flora, Klein*, 6 C. Rob. 9.

See TRADE WITH THE ENEMY.

CONTRABAND.\*

I. WHAT ARTICLES ARE — AND WHEN, 103.

1. *Provisions*, 103.
2. *Hemp*, 104.
3. *Pitch and Tar*, 104.
4. *Despatches*, 105.
5. *Timber*, 105.
6. *Other articles*, 106.

II. DESTINATION OF — HOW AFFECTING, 107.

III. OF THE RIGHT OF PRE-EMPTION OF —, 107.

1. *Generally*, 107.
2. *Of the allowance of claimants' expenses in such cases*, 108.

IV. OF THE PENALTIES OF —, 108.

1. *When and how long attaching—*, 108.
2. *As affecting the ship*, 109.
3. *As affecting the rest of the cargo*, 109.
4. *As affecting the allowance of freight and expenses*, 110.
5. *Exemptions from — under treaties, where allowed — et contra*, 110.

V. REFERENCE TO ASCERTAIN THE CHARACTER OF CARGO, 110.

VI. MISCELLANEOUS CASES, 110.

VII. COSTS IN CASES OF —, 110.

I. WHAT ARTICLES ARE — AND WHEN.

1. *Provisions*.

1. The modern established rule is, that generally provisions are not contraband, but may become so under circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it. *The Jonge Margaretha, Klansen*, 1 C. Rob. 193.

2. Among the circumstances which tend to preserve provisions from being liable to be treated as contraband, one is, that they are the growth of the country which exports them. Another circumstance, to which some indulgence by the practice of nations is shown, is when the articles are in their native and unmanufactured state, as raw iron, hemp, flour, &c. *Ibid*.

3. But the most important distinction is, whether the articles were intended for the ordinary use of life, or even for mercantile ship's use, or whether they were going with a highly probable destination to military use. *Ibid*.

4. Of the matter of fact, on which the distinction is to be applied, the nature and

quality of the port to which the articles were going is not an irrational test; if the port is a general commercial port, it shall be understood that the articles were going for civil use, although occasionally vessels of war may be constructed in that port. *Ibid*.

5. But if the great predominating character of a port be that of a port of naval military equipment, it shall be intended that the articles were going for military use, although merchant ships resort to the same place, and although it is possible that the articles might have been applied to civil consumption. *Ibid*.

6. Cheese fit for naval use and going to a port of naval equipment is contraband. *The Zelden Rust, Rozenna*, 6 C. Rob. 93.

7. Cheeses sent by a Pappenburg merchant from Amsterdam to Brest, and being of the kind used on board vessels-of-war, condemned, but further proof allowed as to such cheeses on a destination to Quimper, a port in the immediate vicinity of Brest. *The Fraw Margaretha, Struer*, 6 C. Rob. 92.; *The Jonge Margaretha, Klansen*, 1 C. Rob. 193.

\* 1. With reference to the definition of articles to be deemed contraband and unlawful for neutral bottoms to convey to enemy ports, see the *Collection of Treaties on this subject in the Appendix to Lampredi Del Commercio de' Popoli Neutrali*.

2. What commodities are from their nature, as well as by the Law of Nations, contraband, considered in 2 *Park on Ins.* 546.

8. Ship-biscuit going from one to another enemy port, viz. from Bordeaux to Cadiz, condemned, and claimant, under Instructions of 1st February, 1805, condemned in costs. *The Ranger, Smith*, 6 C. Rob. 125.

9. Wines are not an article generally contraband, *per se*, but being taken going into Brest, at the time a large armament was lying there, and obviously for the supply of the enemy, *Held* contraband. *The Edward, Bartlett*, 4 C. Rob. 68.

*See post*, No. 58.

### 2. Hemp.

10. The general rule now prevailing in relation to hemp, in relaxation of the strict principle, is, that being the produce and property of the exporting country, and going in a vessel of that country, it is not liable to confiscation. In this case, *Held*, that it was not so liable, though found going in the vessel of another country. Restitution, but captors' expenses allowed. *The Apollo, Botcher*, 4 C. Rob. 158.

11. Hemp is contraband, unless the produce of the exporting country: such a relaxation extended in the case of Lubec and the Hanse Towns to the produce of the neighbouring districts of the German empire, the exportation of the produce of which countries formed the ordinary trade of those towns; but, *Held*, that the *onus* was upon the claimant to prove the hemp to be the growth of such countries. On failure thereof, condemnation. *The Evert, Everts*, *Ibid.* 354.

12. Hemp of an inferior quality, reported not fit for naval purposes, *Held*, not contraband. Restitution, but captors' expenses allowed. *The Gute Gesellschaft Michael, Koltzenberg*, *Ibid.* 94.; *The Jonge Hermanus*, note thereto.

13. Pass hemp, *quære* contraband. *The Evert, Everts*, *Ibid.* 354.

*See ante*, No. 2.

### 3. Pitch and Tar.

14. Tar, pitch, and hemp going to the enemy's use, are liable under the modern Law of Nations to be seized as contraband in their own nature. In 1750 the Lords of Appeal declared pitch and tar the produce of Sweden, on board a French ship bound to a French port, to be contraband, and subject to confiscation. In the more modern understanding of this matter, how-

ever, goods of this nature being the produce of Sweden, the actual property of Swedes, and conveyed by their own navigation, have been deemed in British Courts of Admiralty subject only to the milder rights of pre-occupancy and pre-emption. *The Maria, Paulsen*, 1 C. Rob. 372.

15. Pitch and tar are now become generally contraband in a maritime war. There is, however, a relaxation of the rule, which allows the carrying of these articles being the produce of the claimant's country. *The Sarah Christina, Gorgensen*, *Ibid.* 241.

16. This relaxation is understood, with a condition that it may be brought in, not for confiscation but for pre-emption: to entitle the party to the benefit of this rule, a perfect *bonâ fide* is required. *Ibid.*

17. Carrying pitch and tar to a legal port, with an intention of selling them there, and if not, of carrying them on to an enemy port for sale, is illegal, and the intention of so doing being proved, and that the ulterior destination was concealed, the vessel, the property of the same owners, would be liable to condemnation. *The Richmond, Brattel*, 5 C. Rob. 336.

18. Pitch and tar, the property of a Swedish merchant, and the produce of Sweden, taken on board a Swedish ship on a voyage from a Swedish to a Dutch port, *Held* not to be contraband. Restitution, but captors' expenses of taking the depositions allowed. *The Christina Maria, Kehrock*, 4 C. Rob. 166.

19. In a similar case, restitution having passed on the original evidence, and the cargo having been purchased by Government, expenses of claimant and captor decreed to be paid by Government. *Resolution*, *Ibid.*, note.

20. A cargo of tar taken going from a port of the country of which it could not be the produce, condemned. *The Jonge Tobias, Hilken*, 1 C. Rob. 329.

21. Tar and pitch not the produce of the exporting country nor protected by treaty are contraband. *The Twee Juffrowen, Etjes*, 4 C. Rob. 248.

22. Pitch and tar going on a concealed destination to the enemy's port, ship and cargo both condemned, the master being a part-owner. *The Richmond, Brattel*, 5 C. Rob. 325.

23. A Swedish ship laden with tar, pitch, and deals, sailing under instructions to take British convoy for Lisbon, in case the master should not be able to obtain a purchaser



at Copenhagen for the ship and cargo, but afterwards detected entering a Dutch enemy port: *Held*, (affirming the decision of the High Court of Admiralty) liable to condemnation with her cargo, notwithstanding the protest of the master, alleging the impossibility of obtaining convoy, and that the deviation was occasioned by his apprehension of capture by French cruisers, the suspicious circumstances in the case being *held* to remove all favourable construction usually applied with respect to the general trade of Sweden in such articles. *The Charlotte, Stromsten*, 1 Acton, 201.

24. Order in Council of July, 1807, permitting to Sweden the liberty of trade with the common enemy in innocent articles only, *Held*, under the circumstances, to imply a prohibition as to naval stores. A cargo, therefore, on board a Swedish ship, and consisting of pitch and tar, being naval stores, *held* to be of the nature of contraband, in such a sense as to preclude their falling under the description of innocent articles. Condemnation of cargo accordingly, but the ship and innocent articles of cargo decreed to be restored under the above Order of Council, though in opposition to the general law. *The Neptunus, Bachman*, 6 C. Rob. 403.

#### 4. Despatches.

25. Despatches are all official communications of official persons on the public affairs of Government. The carriage of such papers will entail confiscation on the neutral carrying vessel, whether relating in a great or small degree to the public business of the enemy; for the Court will not construct a scale of relative importance. *The Caroline, Doah*, 6 C. Rob. 465.

26. A neutral ship condemned for carriage of enemy's despatches from the mother country to the colony of the enemy, although such despatches consisted of one letter only, providing for the payment of the salary of the public functionary to whom it was addressed, and although the neutral master averred, on oath, his ignorance of the contents of the letter, and that the parcel containing it had been delivered to him by a private merchant to be delivered to another merchant at a neutral port. *The Susan, note to The Caroline, Doah*, *Ibid.* 461.

27. The carriage of civil despatches merely of the enemy will subject the neu-

tral carrying vessel to condemnation. *The Atalanta, Klein, Ibid.* 454., and *The Sally, Griffiths*, therein cited at page 456.; *The Susan, note to The Caroline, Doah, Ibid.* 461.; but see *The Acteon, Rogers*, 2 Dodson, 54.

28. The carriage of military despatches from the colony to the mother country of the enemy, *Held* to subject the ship to condemnation, as also the cargo, being the property of the same owner. Condemnation of ship and cargo accordingly; but *aliter* as to cargo where the master was not the agent thereof, and the owner was ignorant of the shipment of the despatches. *The Atalanta, Klein, Ibid.* 440.; *The Constantia, Holbeck, note to The Caroline, Douh, Ibid.* 461.; *The Susan, and also The Hope, Jones, note thereto*, p. 462, 463.

29. As a general rule, the master is not at liberty to aver ignorance of the fact of enemy's despatches being on board to defeat the penalty of confiscation. If deception be practised on him, he must seek his redress against the freighter or other party practising the imposition. *The Susan, and also The Hope, Jones, notes to The Caroline, Doah, Ibid.* 462, 463.

30. Despatches from an agent of the enemy, carried by a neutral ship going from a neutral port to the port of the enemy: plea of ignorance on the part of the neutral master admitted. Otherwise if carried from one port of the enemy to another; as in that case the master is bound to greater vigilance as to what papers he carries. Restitution, with captors' expenses. *The Rapid, Fleming, Edw.* 228.; S. P. *The Caroline*, 6 C. Rob. 461.

31. The despatches of the ambassador of the enemy, situated in a neutral country, to the enemy's country, are exempt from the rule of law which entails confiscation upon the neutral carrier of enemy's despatches. Restitution, with captors' expenses. *The Caroline, Doah*, 6 C. Rob. 461.; *The Madison, Frost*, 1 Edw. 224.

32. The carrying of despatches by a neutral from a hostile port to a Consul of the enemy resident in a neutral country, is not a ground of condemnation. Restitution, with captors' expenses. *The Madison, Frost, Edw.* 274.

*See post*, No. 83.

#### 5. Timber.

33. Ship timber, going to an enemy's port of naval equipment, is contraband by

the Law of Nations. *The Endraught, Bonkins*, 1 C. Rob. 25. Masts are ship timber, and therefore contraband. *The Staadt Embden, Jacobs*, Ibid. 29.

34. A Danish cargo of fir timber, spars, barks, and deals, not on a destination to an enemy's port of naval equipment, *Held* not to be *bois de construction*, and therefore not contraband under the Danish treaty. Restitution; but *aliter* if it had been bound to a port of naval equipment. Some suggestion of such a port of discharge appearing in the papers, captors' expenses allowed. *The Twende Brodre, Schall*, 4 C. Rob. 33.

35. Masts, Russian property and produce, not being on board a Russian ship, *Held* not to be within the protection of the Russian treaty. Condemnation. *The Charlotte, Koltzenberg*, 5 C. Rob. 305.

*See ante*, No. 23.; *post*, No. 89.

#### 6. Other articles.

36. *Semble*, that native articles of a neutral country, exported to enemy ports on the account of the inhabitants of the country which produced them, are contraband. *The Staadt Embden, Jacobs*, 1 C. Rob. 29.

37. Cases of cargoes condemned as contraband. *The Endraught, Bonkins*, Ibid. 21.; *The Staadt Embden, Jacobs*, Ibid. 26.; *The Ringende Jacob, Kreplien*, Ibid. 89.; *The Sarah Christina, Gorgensen*, Ibid. 242.

38. Ships-of-war, or adapted for such service, going to a port of the enemy for sale, *Held* to be contraband; but such a construction is limited to cases in which no doubt exists as to the character of the vessels, or the purpose for which they are intended to be sold. *The Richmond, Brattel*, 5 C. Rob. 331.; *The Brutus, Rutherford*, in note thereto and in Appendix, part 2., add. notes, No. 1.

39. Cargo of warlike stores bound to an enemy port, with a contingent destination to this country, taken prior to the notification of hostilities, restored; but, *semble*, condemnation would have followed if it had been taken subsequently to such notification. *The Sarah and Bernhardus*, Hay & Marriott, 175.

40. Neutrals cannot be allowed to carry out a larger quantity of ships' stores (which are contraband as cargo) than are necessary for the ship's use, on the suggestion

of a speculation of purchasing other ships. If such a speculation were *bond fide* entertained, on failure of it the surplus should either be brought back again, or sold in some neutral port of that quarter of the globe. Neutrals can have no right to carry out double stores of this description for a contingent purpose, and then to dispose of them to the enemy at their pleasure. *The Margaretha Magdalena, Predborn*, 2 C. Rob. 141.

41. A neutral vessel with small portions only of cargo and 90 passengers on board, being military officers and mariners in the service of the enemy, and bound to a port of the enemy, *Held* subject to be considered as an enemy transport. Ship and cargo condemned accordingly, as for a carriage of contraband of the most noxious character. *The Friendship, Collard*, 6 C. Rob. 420.

42. The carrying military persons (enemies) to the colony of the enemy, there to take on them the exercise of their military functions, will lead to condemnation; and the Court will not scan minutely the number of persons so carried. Condemnation of a neutral ship, under such circumstances, as a transport of the enemy. *The Orozembo, Brewster*, Ibid. 430.; *The Hope, Jones*, note to *The Caroline, Doah*, Ibid. 463.

43. *Semble*, that the same penalty would attach on the conveyance of enemies to be employed in civil capacities in the enemy's country. *Ibid.* 432.

44. The ignorance of the master of the character of such service on which he was engaged, *Held* not necessary to support the penalty attaching on such delinquency. *Ibid.*

45. Rosin going to a mercantile port, not one of military equipment, *Held* not contraband: *aliter* if to a military port of the enemy. *The Nostra Senhora De Begona, Ybriniga*, 5 C. Rob. 97., and note thereto.

46. Tallow not considered as contraband going to a great mercantile port, being also a port of naval equipment; otherwise if going to a port of mere naval equipment. *The Neptunus, Lampe*, 3 C. Rob. 108.

47. Sail-cloth is universally contraband, whatever be the character of the port to which it may be going. *Ibid.*

48. Copper in sheets, certified by Government dockyard officers as fit for the sheathing of shipping, *Held* to be contraband under the Swedish treaty of 25th

July, 1803, and condemned accordingly; but other portions thereof, certified not fit for such purposes, restored, the old rule of one article of contraband affecting the rest of the cargo being held not to apply, the case being a new one respecting the construction of a treaty, and on which a difference of opinion might have been entertained. *The Charlotte, Focks*, 5 C. Rob. 275.

49. Brimstone under a false destination from Sicily to Copenhagen, but actually to Marseilles, *Held* not to be contraband under the particular circumstances of the case, and the ship restored accordingly (reversing the decision of the Vice-Admiralty Court at Malta). *Semble*, that brimstone might be contraband in other cases. *The Ship Carpenter, Meyer*, 2 Acton, 11. *See post*, Nos. 55, 56, 57.

## II. DESTINATION OF — HOW AFFECTING.

50. Where the ship was going into a blockaded port with articles that would have been contraband if they had gone on, but the master changed the destination on hearing of the blockade, *Held*, that the question of contraband did not arise. Restitution, but captors' expenses allowed. *The Imina Bauman, Vroom*, 3 C. Rob. 167.

51. The penalty of contraband discharged by change of character of the place of destination before capture. Restitution. *The Trende Sastre, Missen*, note, *The Lisette, Steg*, 6 C. Rob. 387.

52. The transfer of contraband from one port of an enemy's country to another, where required for the purposes of war, is liable to be treated in the same manner as an original importation. *The Edward, Bartlett*, 4 C. Rob. 70.

53. The destination of a ship to a port situate in the same bay with a port of naval equipment, so that an importation into the bay would render it impossible to prevent an importation into the port of naval equipment, *Held* to be equivalent to a destination to such latter port, and a cargo contraband under such circumstances condemned. *The Zelden Rust, Rozenna*, 6 C. Rob. 93.

54. Contraband articles going to a port of naval equipment cannot be released

from the penalty of confiscation on proof that they might also be applied for the equipment of merchant vessels. *Note to The Eleanora Whillemina, Zimmerman*, *Ibid.* 334.

*See ante*, Nos. 1 to 9., Nos. 17. to 23. 30 to 36. 39. 45, 46., and *post*, Nos. 58. 76. to 78.

## III. OF THE RIGHT OF PRE-EMPTION OF — \*

### 1. Generally.

55. Naval stores laden on board neutral vessels, but before the time limited by his Majesty's notification of hostilities, and destined for his enemies, decreed under such circumstances to be sold to his Majesty for the benefit of the proprietors. *The Maria, Magdalena, Hay & Marriott*, 250.

56. Cargo of naval stores captured going in a Dutch neutral ship to an enemy port of naval equipment, and claimed as protected by the treaty with Holland of 1674, directed to be sold for his Majesty's use, and proceeds of sale to be paid to the claimant, including freight and expenses. *The Vryheid, Hay & Marriott*, 188.

57. Cargoes of warlike stores directed to be sold for his Majesty's use on a fair valuation, and the proceeds to abide adjudication. *The Vrow Antoinette, Hay & Marriott*, 142.; *De Jonge Joslers, Reetsma*, *Ibid.* 148.; *The Concordia Affinitatis*, *Ibid.* 169.; *The Sarah and Bernhardus*, *Ibid.* 176.; *The Hoppet, Ibid.* 217.; *The Jonge Gertruyda, Ibid.* 246.; *The Prudentia, Ibid.*; *The Concordia Sophia, Ibid.* 267.; *The Drie Gebroeders, Ibid.* 270.; *The Jonge Juffers, Reetsma, Ibid.* 272.; *Store Ships, Ibid.* 287.

58. The ancient practice of Europe was to confiscate cargoes of provisions going to the enemy's ports, but a more mitigated practice has prevailed in later times of holding such cargoes subject only to a right of pre-emption. On the side of the belligerent this right does not go beyond the case of cargoes avowedly bound to the enemy's ports, or suspected on just grounds

\* 3. By 55 Geo. 3. c. 160. s. 55. (the last Prize Act) naval stores on board neutral vessels bound to enemy ports may be brought in and purchased

by the Commissioners of the Navy for his Majesty's use, without proceeding to condemnation thereof. This act, however, expired with the last war.

of having a concealed destination of that kind, and on the side of the neutral the same exact compensation which he might have demanded of the enemy in his own port is not to be expected. He is entitled only to a reasonable indemnification and a fair profit on the commodity, reference being had to the original price actually paid by the exporter and the expenses which he has incurred. *The Haabet, Vette*, 2 C. Rob. 182.

*See antè, Nos. 14. 16. 19.*

59. On the capture of ships laden with a cargo of mixed goods, some of which are fit for the government service, the Navy Board have the right of pre-emption of such goods, and in order to reconcile neutrals to the exercise of this right and to prevent the inconvenience arising from a separation of the cargo, it is thought advisable to purchase the other part of the goods on board. *The Jonge Jan, Schnil*, 1 Dodson, 458.

## 2. Of the allowance of claimants' expenses in such cases.

60. The rule as to the allowance of expenses in the cases of provision ships, the cargoes of which have been taken by government, is to grant such expenses only where the evidence of property is clear and sufficient to obtain restitution on the original evidence. Application for such expenses in a case in which there was a defect of evidence requiring further proof, rejected. *The Minerva, Henricksen*, 2 C. Rob. 302.

*See antè, No. 19.*

61. In the case of a detention of a Swedish ship with a cargo of iron and tar going to a port of the enemy and brought in, subject to a right of pre-emption (by the Swedish treaty substituted for the right of forfeiture) of cargo, which government ultimately refused to purchase, some delay having arisen relative to such determination, three weeks' demurrage allowed and directed to be paid by government. *The Zacheman, Kraeplien*, 5 C. Rob. 152.

## IV. OF THE PENALTIES OF—

### 1. When and how long attaching—

62. The rule respecting contraband is that the articles must be taken *in delicto*

in the actual prosecution of the voyage to an enemy's port. Under the present understanding of the Law of Nations, the proceeds cannot generally be taken on the return voyage. From the moment of quitting port on a hostile destination, however, the offence is complete; and it is not necessary to wait until the goods are actually endeavouring to enter the enemy's port; but beyond that, if the goods are not taken *in delicto* and in the actual prosecution of such a voyage, the penalty does not attach. *The Imina Bauman, Vroom*, 3 C. Rob. 168.

63. It would be too great an extension of the rule of infection to say, that, after the contraband part of a cargo was actually withdrawn, there was such a taint on the remainder of the goods as to render them liable to confiscation, even after the contraband itself was out of its reach. *The Immanuel, Eysenberg*, 2 C. Rob. 196.

64. In cases of contraband, the offence is deposited with the cargo, and the penalty does not attach on the return voyage. *The Frederick Molke, Boysen*, 1 C. Rob. 87.

65. Though a vessel on her return is not liable to confiscation for having carried out a contraband cargo, such an act would affect her credit in some degree on the return voyage. *The Margaretha Magdalena, Predborn*, 2 C. Rob. 140.

66. Persons convicted of sending contraband articles to a settlement of the enemy in the East Indies with false papers for another destination, not allowed further proof of the return cargo being the proceeds of the contraband articles. *The Nancy, Knudsen*, 3 C. Rob. 122.

67. Carrying contraband to a settlement of the enemy with false papers, *Held* to affect even the return voyage. Condemnation accordingly. *The Charlotte, note to The Hoffnung, Hardrath*, 6 C. Rob. 386.; and *Parkman v. Allen, note to The Christiansberg, Vanderweyde*, *ibid.* 382.

68. The rule that the carriage of contraband on the outward voyage subjects the ship to condemnation on the homeward voyage holds notwithstanding the vessel may have performed various different voyages and repeatedly changed her cargoes at the several ports to which she may have traded from the time of her departure from her original port to her return; nor is it necessary that the return cargo should have been purchased by the proceeds of the

contraband cargo. Condemnation in such a case (affirming the decision of the Vice-Admiralty Court at Barbadoes). *The Margaret, Heard*, 1 Acton, 333.

69. Portuguese subjects trading with the enemy's colonies *Held* not to be protected therein by the treaty of 1754 subsisting between this country and Portugal, as excepting them from the general restrictions imposed on neutrals trading with those colonies; and one of such restrictions being the express prohibition of the carriage of contraband outwards, a Portuguese vessel trading to the enemy's colonies having carried a contraband cargo outwards and having been captured on her return voyage, condemned, together with her return cargo, the law of contraband being held to apply to the Portuguese equally with other nations, notwithstanding such treaty. *The Santissima Coracao De Maria, Carneiro*, 2 Acton, 91.

*See ante*, No. 39. 50. 51.

## 2. As affecting the ship.

70. Formerly, by the Law of Nations, the carrying of contraband articles of war worked a forfeiture of the ship, but this rule has, in modern practice, been modified to a forfeiture of freight and expenses only, except in aggravated cases, or where the contraband articles belonged to the owner of the ship. *Note to The Mercurius, Meincke*, 1 C. Rob. 288.; *The Jonge Tobias, Hilken*, *Ibid.* 329.; *The Franklin, Segerbrath*, 3 C. Rob. 217.

71. If he own a share of the vessel, his share only will be condemned. *Ibid.*

72. And this effect will be worked by the contraband articles, though unclaimed, if they appear by all the ship's papers to belong to such part-owner. *Ibid.*

73. Carrying contraband articles is attended with loss of freight and expenses only, except where the ship belongs to the owner of the contraband cargo, or where the simple misconduct of carriage of contraband has been connected with other malignant and aggravating circumstances. *The Ringende Jacob, Kreplien*, 1 C. Rob. 91.; *The Neutralitet, Burning*, 3 C. Rob. 295.

74. Cargo condemned as contraband but ship restored, though it was doubtful whether it was not the property of the same owner. Freight and expenses on carriage of contraband withheld. *The Sa-*

*rah Christina, Gorgensen*, 1 C. Rob. 237. 242.

75. A private vessel is forfeited by the contraband traffic of an officer placed in command by the Board of Admiralty. *Blewitt v. Hill*, 13 East, 18.

76. A false destination with contraband articles on board affects both ship and cargo with condemnation. *The Franklin, Segerbrath*, 3 C. Rob. 217.; *S. P. The Ranger*, 6 C. Rob. 125.

77. Contraband with a false destination, according to the opinion of Trinity Masters, *Held* by the Court to subject ship and cargo to condemnation. *The Edward, Bartlett*, 4 C. Rob. 68.

78. A ship and contraband cargo, the property of the same owner, on a false destination, condemned. *The Floreat Commercium, Radecker*, 3 C. Rob. 178.

79. Carriage of contraband under aggravated circumstances, viz., with the privity of the owner and in violation of a treaty, *Held* to subject the ship to condemnation. *The Neutralitet, Burning*, *Ibid.* 295.

80. Concealed contraband in the outward cargo *Held*, affirming the decision of the Vice-Admiralty Court of Bermuda, to render the vessel on her return voyage subject to condemnation: the misconduct and fraud in the transaction of the supercargo, the agent of the owner, being held to affect his owner's interest. *The Baltic, Donaldson*, 1 Acton, 25.

*See ante*, Nos. 17. 22. to 28., 41. to 44., 65. 68, 69.

## 3. As affecting rest of cargo.

81. The penalty of contraband extends to all the property of the same owner involved in the same unlawful transaction. *The Sarah Christina, Gorgensen*, 1 C. Rob. 242.; *The Neptunus, Bachman*, 6 C. Rob. 409.

82. Innocent parts of the same cargo, to escape from the contagion of contraband, must be property of a different owner. *The Staat Embden, Jacobs*, 1 C. Rob. 30.

83. Condemnation of ship for carriage of enemy's despatches not extended to the cargo, the property of the same owner, who was ignorant of the shipment, it not being shown that the master had been appointed agent for the cargo. *The Susan, and also The Hope, Jones, notes to The Caroline, Doah*, 6 C. Rob. 462, 463.

*See ante*, Nos. 28. 48. 63.

4. *As affecting the allowance of freight and expenses.*

84. Contraband works a forfeiture of freight. *The Ringende Jacob, Kreplien*, 1 C. Rob. 90.; *The Sarah Christina, Gorgensen*, Ibid. 242.; *The Jonge Jacobus Baumann, Muller*, Ibid. 243.; *The Mercurius, Meincke*, Ibid. 288.; *The Emanuel, Soderstrom*, Ibid. 296.; *The Jonge Tobias, Hilken*, Ibid. 329.; *The Wilhelmina, Carlson*, note to *The Rebecca, Moore*, 2 C. Rob. 101.; *The Franklin, Segerbrath*, 3 C. Rob. 217.; *The Neutralitet, Burning*, Ibid. 295.; *The Atlas, Kimble*, Ibid. 304. n.; *Bynkershoek*, lib. 1. c. 10.; 2 Park on Ins. 548.

85. A neutral master cannot aver ignorance of the contents of his cargo. Sailcloth described as linen, and directed not to be opened by the master, having been condemned as contraband, freight thereon refused. *The Oster Risoer, Jurgensen*, 4 C. Rob. 199.

86. Freight and expenses allowed where the contraband articles were but in a small quantity amongst a variety of other articles. *The Neptunus, Lampe*, 3 C. Rob. 108.

5. *Exemptions from — where allowed — et contra.\**

87. The Portuguese treaty of free ship free goods *Held* not to extend to any illegal trade. *The Asia*, cited in index to 6 C. Rob. 4.

88. Condemnation of ship and cargo for carriage of contraband articles, the claim set up of exemption under the Russian treaty being *held* not made out, and permission of the British government to Russia to trade with the enemy in innocent articles being *held* not to protect such a cargo. *The Eleonora Wilhelmna, Zimmerman*, 6 C. Rob. 331.

*See antè, Nos. 18, 34, 35.*

48. 56. 69.

V. REFERENCE TO ASCERTAIN THE CHARACTER OF CARGO.

89. As to the question whether a particular cargo was ship timber the Court referred it to ship-builders in the employ

of government at the place where the vessel lay, and in default of there being such persons there in government employ, to respectable shipwrights there to certify their opinion whether or not it was properly ship timber. *The Endraught, Bonkins*, 1 C. Rob. 25.

VI. MISCELLANEOUS CASES.

90. A British subject resident abroad may engage in trade with the enemy, but not in articles of a contraband nature, the duties of allegiance travelling with him so as to restrain him to that extent. *The Neptunus, Bachman*, 6 C. Rob. 409.

91. It was agreed between two parties that they should be jointly interested in certain proportions in a voyage to be undertaken by a particular vessel from Liverpool to Holland with a cargo of rock salt, and also in a further voyage to South America, with a view of sending out military stores to that quarter, the exportation of which, however, had been prohibited by an Order in Council. The agreement was considered as contemplating one entire and continued adventure, which was, *primæ facie*, illegal; and although the stipulation might have been legalised by the expiration of the time specified in the Order in Council, by a licence being procured for the importation of the stores, or by the abandonment of the illegal part of the voyage, yet, as the adventure was apparently illegal, the Court *Held* it incumbent on the party who sought to establish a claim under it to show that a licence was intended to be obtained, or that, under the circumstances, the contract was not with an illegal design. *Holland v. Hall* (1817), 1 B. & A. 53.

VII. COSTS IN CASES OF —

92. Claimant of contraband cargo, being sea stores going to a port of naval equipment with false papers, condemned in costs of claim. *The Ranger, Smith*, 6 C. Rob. 125.

*See antè, No. 8.*

\* 4. The stipulation in a treaty that "free ships shall make free goods," does not imply the converse proposition that "enemy ships shall make enemy goods." *The Neride*, 9 Cranch's (AMERICAN) Rep. 388.

## CONVOY.

## I. WHAT IS — ET CONTRA.

## II. STATUTORY REGULATIONS WITH REGARD TO —

## III. PROCEEDINGS AGAINST PARTIES FOR DISOBEDIENCE OF —

## I. WHAT IS — ET CONTRA.\*

## II. STATUTORY REGULATIONS WITH REGARD TO — †

## III. PROCEEDINGS AGAINST PARTIES FOR DESERTION AND DISOBEDIENCE OF — ‡

1. Desertion of convoy punished in the Court of Admiralty by the imprisonment of the master for one month, under 45 Geo. 3. c. 72. No fine imposed under the circumstances, *Rex v. Kitto*, 2 Dodson, 57.

2. Proceedings instituted in the High Court of Admiralty against the master of a merchant vessel for disobedience of signals and the lawful orders of the commander of the convoy, in breach of the 45 Geo. 3. c. 72. s. 24., and the master condemned for such disobedience in the sum of 50*l.* to the King in his office of Admiralty and in costs. *The King v. Wayth*, Edwards, 81.

## IV. OF THE RIGHT OF CONVOYING SHIPS TO EFFECT CAPTURES AND RECAPTURES.

3. British conveying ships are not to desert their convoy in pursuit of prizes, but this prohibition does not extend to the taking of prize in self-defence, or when they can do so without desertion of convoy. *The Waaksamheid*, Van Nierop, 3 C. Rob. 1.; *S. P. The Furie*, Pleit, *Ibid.* 9.

4. A conveying ship may make a prize

## IV. OF THE RIGHT OF CONVOYING SHIPS TO EFFECT CAPTURES AND RECAPTURES.

## V. MISCELLANEA.

as well as any other of his Majesty's ships, provided the capture can be effected without deserting the care of the convoy, and there is no more objection in the case of a conveying ship to constructive than to actual capture. *The Galen*, Rogers, 1 Dodson, 430.

5. A conveying ship *held* to be entitled to salvage from a ship under her protection, where she had been captured by the enemy, and recaptured by the conveying ship. *The Wight*, Forde, 5 C. Rob. 315.

6. It is not necessary, in order to entitle a conveying vessel to salvage on recapture of one of her convoy, that the possession of the enemy should be long continued, or that the prize should be carried *infra præsidia* or out of sight; it will be sufficient if there was such an effectual possession as would suspend the relation of the conveying ship. *Ibid.* 320.

See JOINT CAPTURE.

## V. MISCELLANEA. §

7. Swedish vessels sailing under convoy of a frigate of their own sovereign with instructions on board both frigate and merchantmen to resist search, and having actually resisted or refused visitation and search by British cruisers, condemned, but claimants' expenses allowed. *The Maria*, Paulsen, 1 C. Rob. 360., affirmed on appeal; *S. P. The Elsabe*, Maas, 4 C. Rob. 408.

\* 1. A convoy means a naval force under the command of that person whom government may happen to appoint, and this whether government pleases to appoint a relay of convoy from place to place, or a convoy to a given latitude and no further. 2 *Park on Ins.* 696. 709.

2. What is a convoy is governed by usage. *Ib.* 700.

3. Sailing orders from the commander-in-chief to the particular ships are necessary to constitute a convoy. *Ibid.* 698. 706.

4. A convoy appointed by the admiral commanding-in-chief upon a station abroad is a convoy appointed by government. *Ibid.* 700.

† 5. The 38 Geo. 3. c. 76., and the 43 Geo. 3. c. 57., make regulations for compelling merchant vessels to sail under convoy. (They expired, however, with the wars which gave rise to them.)

6. The act which regulated, during the last war, the sailing of British ships under convoy, is the 43 Geo. 3. c. 57., further provisions with regard to

which are to be found in 45 Geo. 3. c. 72. and 55 Geo. 3. c. 160.

‡ 7. By 55 Geo. 3. c. 160. s. 61., masters of merchant vessels under convoy disobeying signals or orders, or deserting convoy, shall be liable to be articulated against in the High Court of Admiralty at the suit of the King in his office of Admiralty, and on conviction shall be fined, at the discretion of the Court, in any sum not exceeding 500*l.*, and suffer such imprisonment, not exceeding one year, as the Court shall adjudge. (This act, however, expired with the last war.)

§ 8. Where a ship put herself under the direction of a man-of-war till she should join the convoy, which had left the usual place of rendezvous before she arrived there, it was *held* not to be a departure with a convoy, although she in fact joined and was lost in a storm. 2 *Park on Ins.* 694, 695. But *aliter* if the single ship be a part of the convoy. *Ibid.* 698.

## COSTS.

## I. OF THE ALLOWANCE OF —

1. *Generally.*
2. *Of pleas not admitted.*
3. *Of irrelevant matter.*
4. *Of review of taxation.*
5. *Of enforcing payment.*
6. *In prohibition.*
7. *Viaticos of witnesses.*
  - (a) *Generally.*
  - (b) *Foreign witnesses.*
8. *Counsels' Clerks' Fees.*

## II. OF THE LIABILITY TO PAYMENT OF —

1. *Generally.*
2. *Where barred — et contra.*

## III. OF THE CROWN.

## IV. OF THE SUSPENSION OF PROCEEDINGS UNTIL PAYMENT OF —

## V. OF THE TAXATION AND ENFORCEMENT IN THE COURT OF APPEAL OF COSTS INCURRED IN THE COURT BELOW.

## VI. MISCELLANEA.

## VII. IN CAUSES OF BOTTOMRY — see BOTTOMRY.

## VIII. OF CAPTORS — see CAPTORS.

## IX. IN CASES OF CONTRABAND — see CONTRABAND.

## X. IN CAUSES OF DAMAGE — see DAMAGE.

## XI. IN CAUSES OF JOINT-CAPTURE — see JOINT-CAPTURE.

## XII. IN CAUSES OF POSSESSION — see POSSESSION.

## XIII. OF THE RESPONSIBILITY OF PROCTORS FOR — see PROCTORS.

## XIV. AS BETWEEN PROCTOR AND CLIENT — see PROCTORS.

## XV. IN CAUSES OF SALVAGE — see SALVAGE (civil).

## XVI. SECURITY FOR — see SECURITY FOR COSTS.

## XVII. IN SLAVE SEIZURES — see SLAVE TRADE.

## XVIII. IN CASES OF TENDER — see TENDER.

## XIX. IN CAUSES OF MARINERS' WAGES — see WAGES.

## I. OF THE ALLOWANCE OF —

1. *Generally.*

1. Parties praying to be heard upon their petition as to a question, in the exercise of any other than a sound discretion, do so at the imminent risk of costs. *Lawrence v. Maud & Pickwell*, 1 Add. 481.

2. Costs are always in the discretion of the Court, to mitigate them as the circumstances of the case may appear justly to require. *Wilson v. M'Math*, 3 Phill. 92.; *Griffith v. Reed & Harris*, 1 Hagg. (Eccl.) 210.

3. The whole course of decisions on the subject of costs has gone on the principle of not giving costs where the law is exceedingly difficult, or the case one *primæ impressionis*. Costs refused in such a case. *The Fortitude*, Douglass, 2 W. Rob. 224.

4. When a question of law is decided for the first time, the Court will not give costs. *The Princess Royal*, 9 Jur. 434.

2. *Of pleas not admitted.*

5. The costs of exceptive allegations tendered on both sides (the admission of which was suspended till the final hearing, and then not prayed to be received,) not allowed to be taxed against a party condemned in costs. *Bird v. Bird*, 2 Hagg. (Eccl.) 553.

3. *Of irrelevant matter.*

6. On a condemnation in costs, certain expenses of the successful party, occasioned by his introduction of irrelevant matter into the act on petition and affidavits, disallowed, the Court expressing its determination to adopt the same rule with respect to costs in all future cases of the same kind. *The Apollo, Tennant*, 1 Hagg. 319.

7. In a case of damage, an affidavit having been rejected, as containing hearsay evidence, the Court excepted the costs of the affidavit from the general condemnation of costs. *The Washington*, 5 Jur. 1067.

4. *Of review of taxation.*

8. Costs of a rule for reviewing a taxation are not given where the mistake is with the master. *Ward v. Bell*, 2 Dowl. P. C. 76.

9 Where a party applied for a review of the taxation of costs, and the taxation was referred back to the Master, *Held* that he was not entitled to the costs of the rule upon which the review was sought for and obtained. *Parsons v. Pitcher*, 6 Dowl. P. C. 600., 6 Scott, 298.

5. *Of enforcing payment.*

10. In taxing costs the expense of the motion for payment is always added, and



if the monition be not obeyed in the first instance, the further expense falls, by a just and even necessary consequence, upon that party through whose neglect or refusal to obey in the first instance it was incurred. *Coates v. Brown*, 1 Add. 345.

#### 6. In prohibition.

11. The 8 & 9 W. 3. c. 11. s. 3. gives costs to the plaintiff in prohibition on judgment for him, either on plea or demurrer; and to the defendant on verdict for him, or on nonsuit or discontinuance.

12. By 1 W. 4. c. 21. s. 1. the party in whose favour judgment shall be given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings.

13. Where a rule is made absolute for issuing a prohibition, the costs of the rule cannot be granted to the successful party under 1 W. 4. c. 21. s. 1.; that statute only applying to cases where there have been pleadings in prohibition. *Rex v. Kealing*, 1 Dowl. P. C. 440.

14. The 1 W. 4. c. 21. does not enable the Court, where a party has declared in prohibition and succeeded, to grant him his costs incurred in the Ecclesiastical Court. *Tessimond v. Yardley*, 5 B. & Ad. 458.

#### 7. Viaticos of Witnesses.\*

##### (a) Generally.

15. A broker is not entitled to compensation for loss of time. *Lopes v. De Tastet*, 7 Moore, 120., 3 B. & B. 292.

16. The allowance for travelling expenses for each witness is to be the ex-

pense actually paid, not exceeding one shilling per mile, unless under special circumstances. Reg. Gen., K. B., C. P., & Exch. Hil. Vac. 4 W. 4. (15 March, 1834), 3 Nev. & M. 18.

17. The Master, in taxing the expenses of witnesses, according to a certain scale, cannot allow more than is actually paid for their travelling expenses. *Radcliffe v. Hall*, 3 Dowl. P. C. 802., 5 Tyr. 770.

18. Where the captain of a merchant ship domiciled in this country was detained by the plaintiff for a considerable time to give evidence in a cause, but before issue was joined or notice of trial given: *Held*, that the Master was at liberty, in taxing the costs, to allow the expenses of maintaining the witness during such detention. *Anon.*, 2 D. & R. 424.; S. C. nom. *Berry v. Pratt*, 1 B. & C. 276.

19. Subsistence allowed in costs, in a policy cause, to the master of a ship insured, a material witness, from the time of subpoena to the time of trial, although the witness resided in England, was not examined, was a master in the Royal Navy, and did not show the permission of the Admiralty for him to engage in the merchant service. *Mount v. Larkins*, 8 Bing. 195., 1 M. & Scott, 357., 1 Dowl. P. C. 262.

20. So, in another cause, the Court approved of the allowance, on taxation, of subsistence-money for a witness, the captain of a ship, from the service of the subpoena till the time of trial. *Temperly v. Scott*, 1 M. & Scott, 601., 8 Bing. 392.

21. A master of a vessel detained here as a necessary witness was allowed, in the taxation of costs, the expenses of his living here, and his travelling expenses, and disallowed a claim of 7*l.* per month for wages, which, if he had sailed, he would have been entitled to: *Held*, that the al-

\* For further cases on this head see *Harrison's Digest*, vol. i. p. 1840.

1. The taxing officers of the Superior Courts have agreed to the following allowances to witnesses subpoenaed to give evidence, which allowances have been approved of by the Judges:—

|   | <i>l.</i> | <i>s.</i> | <i>d.</i> | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|---|-----------|-----------|-----------|-----------|-----------|-----------|
| For travelling expenses, per mile, one way from                             | 0         | 0         | 7         | to        | 0         | 1         |
| To journeymen labourers, &c., per diem -                                    | 0         | 5         | 0         | —         | 0         | 15        |
| To tradesmen, yeomen, and farmers, per diem -                               | 0         | 5         | 0         | —         | 0         | 15        |
| To auctioneers, accountants, shorthand writers, merchants, &c., residing in |           |           |           |           |           |           |

|   |           |           |           |           |           |           |
|---|-----------|-----------|-----------|-----------|-----------|-----------|
| London, if the trial be there, per diem - | <i>l.</i> | <i>s.</i> | <i>d.</i> | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|   | 1         | 1         | 0         |           |           |           |

To the same, if at country

|                     |   |   |   |
|---------------------|---|---|---|
| assizes, per diem - | 1 | 1 | 0 |
|---------------------|---|---|---|

|                            |   |   |   |   |   |   |
|----------------------------|---|---|---|---|---|---|
| Professional men, per diem | 1 | 1 | 0 | — | 2 | 2 |
|----------------------------|---|---|---|---|---|---|

|                     |   |    |   |   |   |   |
|---------------------|---|----|---|---|---|---|
| Attorney's clerks - | 0 | 15 | 0 | — | 1 | 1 |
|---------------------|---|----|---|---|---|---|

Females, according to station

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| in life - | 0 | 5 | 0 | — | 1 | 0 |
|-----------|---|---|---|---|---|---|

2. A witness, a barrister, having been examined in chief, refused to attend and undergo cross-examination unless paid a compensation for loss of time, *Held*, that a barrister is not entitled to compensation for loss of time, which is confined to physicians and attorneys, but only to his expenses of going to and coming from his examination. *Fraser v. Fraser*, 4 Notes of Cases, 320.

lowance was proper. *White v. Brazier*, 3 Dowl. P. C. 499.

22. In taxing costs, the contingent losses which witnesses may have suffered by obeying the subpoena cannot be allowed. *Hullusson v. Staples*, 2 Dougl. 438.

23. *Semble*, that a party is not entitled to the costs of witnesses unless they have been paid to them previously to taxation. *Lopes v. De Tastet*, 7 Moore, 120., 3 B. & B. 292.

#### (b) Foreign witnesses.

24. It is a question for the discretion of the Master in each particular case, whether the expenses of witnesses brought from abroad should be allowed on taxation. The act 1 W. 4. c. 22., for the examination of witnesses on interrogatories, has made no alteration in this respect. *McAlpine v. Poles*, *Powles*, or *Coles*, 1 C. & M. 795., 3 Tyr. 871., 2 Dowl. P. C. 299.

25. Reasonable allowance in costs may be made for the loss of time of a necessary foreign witness, who is not accessible to subpoena, and who will not attend without compensation. *Loneragan v. Royal Exchange Assurance Company*, 1 Dowl. P. C. 233., 5 M. & P. 805., 7 Bing. 729.

26. The costs of bringing over a necessary witness from the continent to this country are to be allowed. *Cotton v. Witt*, 4 Taunt. 55.

27. But not the costs of his return. *Ibid.*

28. Although it was previously held in the Common Pleas that the costs were only to be allowed from the time of the witnesses coming within the jurisdiction of the Court. *Hagedorn v. Alnutt*, 3 Taunt. 379.

29. Compensation for loss of time disallowed to two merchants coming from abroad as witnesses. *Moor v. Adam*, 5 M. & S. 156.; S. P. *Lowry v. Doubleday*, 5 M. & S. 159. n.

30. If a witness is *bond fide* sent for

from a foreign country to support an intended action, though the writ is not sued out until after his arrival, the plaintiff is entitled in that cause to the costs of bringing him over, his subsistence, and compensation for his loss of time spent here pending the suit for the purposes thereof, and to the costs of his return. *Tremain v. Barrett*, and *same v. Faith*, 1 Marsh, 463. 563., 6 Taunt. 88.

31. But if the witness is sent for to give evidence in one action which is discontinued, and the plaintiff calls him as a witness in another action against a different defendant, but arising out of the same transaction, he is entitled, in the second action, to the costs only of the witness's subsistence and detention for the purpose of the second action, but not of his voyage hither or of his return. *Ibid.*

32. A plaintiff, who brings over a foreign witness hither, in order to judge, by his testimony, whether there is ground to bring an action, and afterwards sues, and examines the foreigner at the trial, may be allowed the costs of detaining him here from the time of the writ sued out until the trial, and a reasonable sum for his sustenance here during the same time; but not costs of his passage hither, or of his return. *Schimmel v. Lousada*, 4 Taunt. 695.

33. Where foreign witnesses appear to be domiciled in this country, they are not entitled to the expenses of their return home. *Lopes v. De Tastet*, 7 Moore, 120., 3 B. & B. 292.

#### 8. Counsel's clerks' fees.\*

### II. OF THE LIABILITY TO PAYMENT OF —

#### 1. Generally.

34. The owners, master, and crew, the parties proceeding in a suit, having been condemned in costs, the adverse party is fully justified in selecting to proceed against the owners only for such costs, especially

\* 3. The following scale of fees to counsel's clerks has been issued by the Council of the Law Society as allowed, under the sanction of the Judges of the Superior Courts, on the taxation of costs: —

On briefs, cases, &c.,

| Upon a fee of                |  | l. s. d. |      |
|------------------------------|--|----------|------|
| 1 guinea and under 5 guineas |  | - 0      | 2 6  |
| 5 — 10                       |  | - 0      | 5 0  |
| 10 — 20                      |  | - 0      | 10 0 |
| 20 — 30                      |  | - 0      | 15 0 |

|   |   | l. s. d. |        |
|---|---|----------|--------|
| 30 guineas and under 50 guineas                                       | - | 1        | 0 0    |
| 50 —  | - | 1        | 5 0    |
| And above 50 guineas the taxing officer must exercise his discretion. |   |          |        |
| On consultations,   |   |          |        |
| Senior's clerk  | - | -        | 0 7 6  |
| Junior's clerk  | - | -        | 0 2 6  |
| On general retainer   | - | -        | 0 10 6 |
| On common retainer  | - | -        | 0 2 6  |
| On conference   | - | -        | 0 5 0  |

where such latter parties are in humble circumstances and wholly incompetent to meet such a claim; though all the parties are, in point of law, equally responsible for the whole or any part of such costs. *Whiteline*, 1 W. Rob. 341.

35. Where there are several defendants, each is liable for the whole costs; but if, after satisfaction from any one, the plaintiff takes it against another, such defendant may apply to the Court. *Wilson v. Foot*, Bull. N. P. 335.

36. If a party committed for non-payment of costs under an erroneous process be thereupon released, the Court is bound, at the application of the party to whom they are still due, to issue a new monition for payment of such costs. *Austin v. Dugger*, 1 Add. 307.

37. Obedience to a monition for payment of costs can only be rendered by payment of costs. *Coates v. Brown*, 1 Add. 345.

## 2. Where barred — et contra.

38. The obligation to pay costs, pursuant to a monition for payment, *Held*, under the circumstances, not to be dispensed with by the party to whom they were due having bound himself to waive them by an instrument executed out of Court. *Coates v. Brown*, 1 Add. 345.

## III. OF THE CROWN.

39. The Crown neither gives nor takes costs. *The Duke of Sussex, Forss*, 1 W. Rob. 274.

## IV. OF THE SUSPENSION OF PROCEEDINGS UNTIL PAYMENT OF —

40. Where there were six actions against owners and six against the captain of a ship for wages, the Court of King's Bench stayed the proceedings in one of the latter until payment of costs in one by the same

plaintiff against the owners, which had been tried, and in which there had been a verdict for the defendants. *Bond v. Gooch*, Hull on Costs, 465.

41. Proceedings cannot be stayed in a Court of Equity till the payment of the costs of a suit at law. *Anon.* 1 Chitt. 195.

42. The admission of an allegation was opposed on the ground that the party giving it in had been condemned in costs which had remained unpaid; but, as no monition to enforce the payment had been served upon him, the Court refused to sustain the objection, and admitted the allegation. *Smith v. Corry*, 1 Lee, 432.

## V. OF THE TAXATION AND ENFORCEMENT IN THE COURT OF APPEAL OF COSTS INCURRED IN THE COURT BELOW.

43. On an appeal from a grievance, the Court of Appeal cannot enforce payment of the costs incurred in the inferior Court. *Brisco v. Brisco*, 3 Phill. 38.

44. Costs in the Courts below not allowed to be taxed in the Court of Appeal. *Westmeath v. Westmeath*, 2 Hagg. (Eccl.) 133. *Supp.*

## VI. MISCELLANEA.\*

45. Where a pauper plaintiff sues several defendants, some of whom succeed, the costs of the successful defendant cannot be set off against the costs which the plaintiff is entitled to recover from the others. *Yougenheim v. Lane*, 4 Dowl. P. C. 482., 1 M. & W. 136., 1 Gale, 343.

46. The giving of costs is not a matter absolutely unappealable, though such appeals, especially for trifling sums, are much to be discouraged. *Lloyd and Clarke v. Poole*, 3 Hagg. (Eccl.) 477.

47. Contempt of Court for nonpayment of costs cannot (*semble* involuntarily) be waived by the parties. *Gompertz v. Best*, 1 Y. & C. 619.

\* 4. Where a party is condemned in costs which have been regularly taxed and paid, notwithstanding a caveat having been entered against such payment, the Court will not entertain a motion for

re-considering the taxation at the instance of the caveateer; such a motion rejected accordingly. *The Soegutten*, 3 Notes of Cases, 270.

## COSTS AND DAMAGES.

1. If, by articles, a place or district is put under the King's peace, and an act of hostility is afterwards committed therein, the injured party may have a right to resort to a court of prize, to show that he had been injured by this breach of peace, and is entitled to compensation; and if the officer acted through ignorance, his own Government must protect him, for it is the duty of Government, on putting a certain district within the King's peace, to notify those persons by whose conduct that peace is to be maintained; and if no such notice has been given, nor due diligence used to give it, and a breach of the peace is committed through the ignorance of those persons, they are to be borne harmless at the expense of that Government whose duty it was to have given that notice. *The Mentor, Campbell*, 1 C. Rob. 179.

2. The general rule is, that a person unjustly deprived of his property is entitled

to full restitution, with costs and damages; but this rule is subject to modification, as where the claimant has given occasion by his conduct to the capture, &c., in which case he is entitled only to simple restitution. *The Acteon, Rogers*, 2 Dodson, 52.

3. A party having a decree for costs and damages is to be protected against the expense of poundage. An express decree of costs and damages must go to every thing in the way of compensation. *The Driver, Cashman*, 5 C. Rob. 146. n.

4. Restitution by consent, without reservation, must be understood to include an act of amnesty on both sides. Claim for costs and damages against captor held to be barred thereby. *The Maria Powlona, Hemmes*, 6 C. Rob. 236.

*As to the responsibility of captors for — see CAPTORS; SLAVE TRADE.*

## COURTS.

## I. OF THE JURISDICTION OF COURTS OF EQUITY.

1. *With reference to decisions in the Privy Council and by Commissioners for Adjustment of British Claims on France.*
2. *Over Courts of Admiralty.*
3. *In matters of prize.*
4. *In cases of title to ships — see TITLE.*

## II. MISCELLANEA.

## III. OF COURTS OF ADMIRALTY AND VICE-ADMIRALTY — see ADMIRALTY.

## IV. OF COURTS OF APPEAL — see APPEAL.

## V. OF THE COURT OF THE CINQUE PORTS — see CINQUE PORTS.

## VI. OF COURTS OF PRIZE — see PRIZE.

## VII. OF COURTS FOR DETERMINING SALVAGE CLAIMS — see SALVAGE (civil).

## VIII. OF THE COURTS OF MIXED COMMISSION FOR DETERMINING SLAVE SEIZURES — see SLAVE TRADE.

## IX. OF COURTS FOR DETERMINING CLAIMS OF MARINERS FOR WAGES — see WAGES.

## I. OF THE JURISDICTION OF COURTS OF EQUITY.

1. *With reference to decisions in the Privy Council, and by Commissioners for adjustment of British claims on France.*

1. No appeal lies to the Court of Chancery from decisions either of the Privy Council or the Commissioners under the acts and conventions for indemnifying British subjects from the confiscation of their property by the French revolutionary

government. *Hill v. Reardon*, 2 S. & S. 431.

2. If a party claim before the Commissioners appointed under the conventions for indemnifying British subjects for the confiscation of their property by the French revolutionary government, in a character which he really sustains, and an award is made to him in that character, a Court of Equity has no jurisdiction to interfere at the suit of a party claiming to have a better title to the compensation. *Lloyd v. Lord Trimlestown*, 4 Sim. 296.

## 2. Over Courts of Admiralty.\*

3. The Court of Chancery hath always had an Admiral jurisdiction, not only *per viam appellationis*, but *per viam evocationis*, and may send for any cause out of the Admiralty to determine it. *Blad v. Bamfield* (1674), 3 Swan. 605. 670.; and see 31 *Hen. 6.*, Rot. Pl. No. 68. (5 Rot. Pl. 268.)

4. There is no relief in equity against a security given for performing the sentence of a Court of Admiralty, although reversed on appeal, the Court to which appeal had been made not having jurisdiction. *Denew v. Stock*, 3 Swan. 662.; see *Love v. Baker*, 1 Ch. Ca. 67.; S. C. Nelson, 103.

5. Injunction granted to stay proceedings upon a sentence in the Admiralty Court, new evidence having been discovered at a period when, according to the practice of the Court, it could not be received. *Jarvis v. Chandler*, 1 Turn. & Russ. 319.

*In cases of bottomry — see*  
BOTTOMRY, cap. III.

## 3. In matters of prize.

6. Letters of marque and reprisal may be vacated in Chancery. *Rex v. Carew*, 3 Swan. 669.

7. The Court of Chancery has Admiralty jurisdiction. Letters of marque and reprisal may be repealed in Chancery after a peace, though there is a clause in the letters-patent that no treaty of peace shall prejudice them. *Ibid.* 1 Vern. 54.

8. Where a privateer had taken a prize without having letters of marque, and the Court of Admiralty had sentenced her as a droit to the Crown, the Court of Chancery refused, with costs, to restrain the parties from receiving, or the registrar of the Admiralty from paying, the proceeds under a

treasury warrant. *Nicholl v. Goodall*, 10 Ves. 155.

9. *Quære*, whether it be competent to a Court of Equity to determine whether a ship-of-war was or was not at the time of the capture one of the squadron under the command of a particular officer? *Parker v. Toulmin*, 1 Cox, 264.

## II. MISCELLANEA.

10. The 3 & 4 *Vict. c. 65. s. 23.* saves to the Courts of Law and Equity the jurisdiction they then had with respect to all causes of action over which jurisdiction is by that act also given to the High Court of Admiralty.

11. The penalties imposed by a foreign law must be enforced, not in an English, but in the foreign Court. *Le Louis, Forest*, 2 Dodson, 253.

12. A Judicial Court cannot take notice of a foreign government not acknowledged by the Government of the country in which that Court sits; and the fact of acknowledgment is matter of public notoriety. *Grierson v. Eyre*, 9 Ves. jun. 347.

13. In setting up the decisions of foreign Courts, an exemplification of the judgment is required. *Koster v. Sapté*, 1 Curteis, 702.

14. A Court which is called on to enforce a foreign judgment may examine into that judgment to see whether it has been rightfully obtained or not. *Don v. Lippman*, 5 Clark & Fin. 1.

15. The Courts of Common Law are entrusted with the exposition of Acts of Parliament. *Gould v. Gapper*, 5 East, 370., 1 Smith, 328.

16. Courts having co-ordinate jurisdiction may or may not be bound by a single precedent, according to the circumstances of the case; but an inferior Court cannot reject precedents laid down by a superior Court. *Veley and Joslin v. Burder*, 1 Curteis, 390.

\* 1. Common injunction does not stay proceedings in the Admiralty Court, but must be moved for specially. *Macnamara v. Macquire*, Dick. 223.

## CROWN.

## I. OF THE RIGHTS OF —

1. *Generally.*
2. *Of the delegation of —*
3. *To the sea, havens, rivers, &c.*
4. *Over conquered countries.*
5. *To property of alien enemies.*
6. *To royal fish.*
7. *As to costs.*
8. *Miscellanea.*
9. *To freight — see FREIGHT.*

10. *To prize — see PRIZE.*11. *To wreck — see WRECK.*

## II. OF THE PROPERTY OF —

1. *Generally.*
2. *Of the liability of vessels of the Crown in cases of damage committed by them — see DAMAGE.*
3. *Of the liability of — to the Navigation Laws — see NAVIGATION LAWS.*
4. *Of neutral sovereigns — see NEUTRALS.*

## III. OF GRANTS FROM —

1. *Of the construction of —*

## I. OF THE RIGHTS OF —

1. *Generally.*

1. *Quære*, Is not every acquisition distributable to the officers and crews of his Majesty's ships, and to marines, in the first instance acquired for the Crown? Could prize agents, the only persons authorized to make distribution in such cases, compromise any such rights without consent of the Crown? And could not the Crown claim, in cases of salvage effected by servants of the Crown, in its pay, and on board its ships, the amount of salvage and its appropriation for public purposes? *The Thetis*, 3 Hagg. 233.

2. *Quære*, Has the Crown the power of granting away rights and perquisites which always belonged to a high officer of state, and which have already been granted to the person exercising that office? Such a power is not to be presumed. *The King v. Forty-nine Casks of Brandy*, 1 *Ibid.* 270, 271. 287.

3. Public officers are not bound to appear when the interests of the Crown are concerned. *The Athol, Bellamy*, 1 *W. Rob.* 381.

2. *Of the delegation of —*

4. Authority delegated by the Crown may be taken as emanating from the

Crown. *The Carolina, Verhage*, 6 *C. Rob.* 337.

5. The governor of a colony has not, by virtue of that appointment, the whole sovereignty of the colony delegated to him as a viceroy, so as to represent the King in the government of that colony, but he is an officer merely, with a limited authority from the Crown. An act, therefore, done by him on his own authority, unauthorized either by his commission, or expressedly or impliedly by any instructions, is not equivalent to such an act being done by the Crown itself, and is consequently not valid. *Cameron v. Kyte*, 3 *Knapp.* 332.

6. *Semble*, that the non-objection on the part of the Crown to a notification or proclamation issued by a governor of one of its ceded colonies, does not imply that the governor had authority in the subject of the proclamation, nor will its non-interference render the proclamation valid on the ground of acquiescence. *Ibid.*

3. *To the sea, havens, rivers, &c.\**

7. Every navigable river, so high as the sea flows and reflows therein, is *flumen regale*, and the fishery of it is also royal fishery, and belongs to the King by his

\* 1. The sea is of the allegiance of the King, and parcel of his crown of England. 5 *Rep.* 108., 16 *Vin. Abr.* 577.

2. An arm of the sea is where the sea flows and reflows. 2 *Rol.* 169. *l.* 12.

3. And every arm of the sea or navigable river, so high as the sea flows and reflows, belongs to the

King, and he has the same property therein as in *alto mare*. *Dav.* 56., 2 *Rol.* 170. *l.* 20.

4. The King has the property *tam aquæ quam soli*, and all profits in the sea and all navigable rivers. *Cal.* 17., *Dav.* 56. 57., 14 *Com. Dig.* 260.

5. So the property of the soil in all rivers which have the flux and reflux of the sea belongs to the

prerogative. *Royal Pischary of the Banne*, Dav. Rep. 56., 16 Vin. Abr. 577.

8. The sea is the property of the King, and so is the land beneath it, except such part of that land as is capable of being usefully occupied without prejudice to navigation, and of which a subject has either had a grant from the King, or has exclusively used for so long a time as to confer on him a title by prescription. *Benest v. Pipon*, 1 Knapp. 67.

See SEA.

#### 4. Over conquered countries.

9. The King has a legislative authority over a conquered country, although he may preclude himself from the exercise of that authority by a proclamation that he has commissioned the governor to call an assembly of the people for the purpose of enacting laws. *Campbell v. Hall*, Loft. 655., Cowp. 204.

10. The King has the whole legislative authority in a conquered colony, in so far as he may not have parted with it by capitulation, or by his own voluntary grant. *Cameron v. Kyte*, 3 Knapp. 342.

11. The law of a conquered country may be altered by the King by proclamation or letters-patent under the great seal, and not solely by means of an Order in Council. *Jephson v. Riera*, Ibid. 130.; *Cameron v. Kyte*, Ibid. 346.

See CAPITULATIONS.

#### 5. To property of alien enemies.

12. The Crown may, if it think proper, advance a claim for restitution of a captured vessel belonging to a party who, by the intervention of hostilities since, has be-

come an alien enemy, and may prosecute an appeal from a condemnation thereof, as being entitled to the property of such alien enemy. *The Charlotte, Avery*, 1 Dodson, 214.

See ALIENS, cap. III. sect.  
3 & 4.

#### 6. To royal fish.

13. By 17 Edw. 2. c. 11. it is enacted that the King shall have wreck of the sea throughout the realm, whales and great sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the King.\*

14. The King shall have the great fishes of the sea, as whales, sturgeons, &c., which are *pisces regales*, and no subject can have them without special grant of the King. *The Royal Pischary of the Banne*, Dav. Rep. 56 a, 7 Co. 16 a, Stamford, Prer. R. 37, 38., Bracton, lib. 3. cap. 3. 39 E. 3. 35 a.†

15. The right of the Sovereign to royal fish, by which appellation whale and sturgeon are characterised, is a clearly established prerogative of the Crown. It may transfer these rights. *The Lord Warden of the Cinque Ports v. The King in his office of Admiralty*, 2 Hagg. 441.‡

16. A whale, discovered by some fishermen three miles from the shore, and towed by them on to Whitstable Beach, *Held* to belong to the Lord Warden of the Cinque Ports, as found and taken within his jurisdiction, and not to the Commissioners for executing the office of Lord High Admiral of England, on the ground that the Crown was entitled to the whale as a royal fish, and that having apparently from the patents of both functionaries granted such rights to both the claimants, the grant to

King, and not to the lord of the manor adjoining, without grant or prescription. 1 *Sid.* 143, 149., 14 *Com. Dig.* 260.

6. Every haven and port of common right belongs to the King. *Dav.* 56.

7. And a grant to the subject is not good, for a subject cannot have it. 1 *Roll.* 5.

8. A subject may by grant or prescription have the interest in the water and soil of navigable rivers, as the city of London has the soil and property of the Thames by grant. *R. Dav.* 56 b, 4 *Com. Dig.* 260.

\* 9. This is not a new law, but only a declaration of the Common Law, which existed antecedently to the statute. *Pl. Com.* 315., *Britt.* 27. cap. 17., 16 *Vin. Abr.* 577.

10. So the fishery of every navigable river, as

high as the sea flows and reflows, belongs to the King by his prerogative. 2 *Roll.* 170. l. 20., *Dav.* 56.

† 11. According to Selden, it is sufficient if the King have the head, and the Queen the tail, of a whale. *Seld. Fleta*, 61. lib. 1. cap. 46. But of a sturgeon the King shall have the whole by his royal privilege. *Ibid.* cap. 45., 16 *Vin. Abr.* 577.

12. A lord of the manor prescribed to have royal fish, and thereby claimed a porpoise taken; but by Belknap, where a fish is taken in the high sea, it belongs to the taker. 39 *E. 3.* 35 b, *Br. Prerogative*, pl. 35., 16 *Vin. Abr.* 577.

‡ 13. A man by grant or prescription may claim royal fish, as *balenas et sturgesiones*, within his manor, or have a free fishery in a bay or creek of the sea. *Dav.* 57 a, 4 *Com. Dig.* 448.

the Lord Warden, as being held to be the more ancient office of the two, excluded the like grant to the Lord High Admiral. *Ibid.* 438.

*See antè, No. 7.*

#### 7. *As to costs.*

17. The Crown neither gives nor takes costs. *The Duke of Sussex, Forss*, 1 W. Rob. 274.

#### 8. *Miscellanea.*

18. It is the general rule of civilised countries that what is found derelict on the seas is acquired beneficially for the Sovereign or his grantees if no owner appear. In England this right is firmly established. *The Aquila, Lunsden*, 1 C. Rob. 42.

19. Usage is not in itself good as against the Crown, except as evidence of a grant from it. *Prima facie* all goods without an owner belong to the Crown, and if a claim be set up against it, the party setting it up must show an actual grant or usage from which such a grant may be presumed as might have been made conformably with law. *The King v. Two Casks of Tallow*, 3 Hagg. 297.

20. The Crown has a right to the custody of the property of a foreigner deceased until a better title to it can be shown. *Aspinwall v. Queen's Proctor*, 2 Curteis, 246.

21. The Crown cannot control a statute even by its licence. *Toulman v. Anderson*, 1 Taunt. 227.

## II. OF THE PROPERTY OF.

### 1. *Generally.*

22. There is no distinction between the public and private property of an *absolute* monarch. Money, therefore, in the hands of a banker of a prince whose territories had been conquered by the British troops may be recovered, on an information by the Attorney-General, from the banker. Such a claim preferred on behalf of the Crown, and after the termination of the war, pronounced for. *Advocate-General of Bombay v. Amerchund, note to Elphinstone v. Bedreechund*, 1 Knapp. 329.

23. Monies issued by the Crown to an army agent for the pay, subsistence, &c., of officers, and carried in the books of the agent to the credit of the respective officers, but not paid over to them, and not made the subject of any private arrangement with them, continue the monies of the Crown in the hands of the agent, for which he is accountable to the Crown, and may be called back by the Attorney-General as representing the Crown, even after a lapse of more than thirty years. *Brummell v. McPherson* (1828), 5 Russ. 263.

## III. OF GRANTS FROM.

### 1. *Of the construction of—*

24. All grants from the Crown are to be construed strictly against the grantees: those from a subject against the grantor. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 271.; *The Panda*, 1 W. Rob. 436.; *S.P. The Rebeckah, Thompson*, 1 C. Rob. 229.; *The Gertruyda, De Vries*, 2 C. Rob. 219.

## CUSTOMS AND USAGES.

1. Ancient custom is a just foundation of law. *The Slave, Grace*, 2 Hagg. 107.

2. Usage is not in itself good as against the Crown, except as evidence of a grant from it. *The King v. Two Casks of Tallow*, 3 Hagg. 297.

3. The custom of merchants is part of the law of the land. *Valezjo v. Wheeler*, Lofft. 631.

4. The custom of merchants is the general established law, not any special local custom. *Edin v. East India Company*, 1 W. Black. 299., 2 Burr. 1216.

5. But it must be controlled by adjudged cases. *Ibid.*

6. The opinion of merchants is not the custom of merchants. *Ibid.*

7 But evidence of the general opinion of merchants is allowed to be given to prove the custom of merchants. *Camden v. Cowley*, 1 W. Black. 417. (Mansfield.)

8. The general law as to a custom is, that if its existence at a distant time be shown, and there is no evidence that at any certain time it did not exist, a jury may infer that it went back as far as the



reign of Richard the First, which is the time of legal memory. *Leuchhart v. Cooper*, 7 Car. & P. 119. (Tindal.)

9. A custom, proved to have existed from time immemorial till 1689, must be taken to exist still, if there be no further evidence proving or disproving its existence. *Scales v. Key*, 11 Ad. & E. 819, 3 Per. & D. 505.

10. A usage of trade must be proved by instances, and cannot be supported by evidence of opinion merely. *Cunningham v. Fonblanque*, 6 Car. & P. 44. (Park.)

11. If a custom be set forth generally, and it be proved that there are exceptions,

it is a fatal variance. *Griffin v. Blandford*, Cowp. 62.; and see *Peter v. Kendall*, 6 B. & C. 703.

12. In a cause of bottomry the Court will not hold itself bound by the custom of a foreign port unless such custom be reasonable and just. *The Cognac, Even*, 2 Hagg. 392.

*As to customs of vessels to render mutual assistance gratuitously — see SALVAGE (civil).*

*As to customs of rivers in the navigation thereof — see DAMAGE.*

## DAMAGE.

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF —, 122.

1. *Generally*, 122.
2. *Over foreign vessels*, 122.

## II. OF THE RIGHT TO COMPENSATION FOR —, 123.

1. *Generally*, 123.
2. *In cases of inevitable accident*, 123.
3. *Where both vessels are to blame*, 124.
  - (a) *In suits in the Court of Admiralty*, 124.
  - (b) *In suits at common law*, 125.
4. *Of the priority of lien of a successful suitor in a cause of damage*, 126.
5. *Of the distribution of proceeds of sale of the damaging vessel among different claimants in respect of the same collision*, 127.

## III. OF THE MEASURE OF COMPENSATION FOR —, 127.

1. *General principles with regard to —*, 127.
2. *Consequential damage*, 127.

## IV. OF THE RIGHTS AND RESPONSIBILITIES OF CARGO IN CASES OF —, 128.

## V. OF THE DUTIES OF VESSELS GENERALLY IN ORDER TO AVOID COLLISION, 128.

1. *General rules with regard to —*, 128.
2. *To keep a proper look-out*, 129.
3. *As to the complement of men*, 129.
4. *With reference to vessels at anchor*, 129.
5. *In cases of launch*, 129.

## VI. OF THE DUTIES OF SAILING VESSELS IN ORDER TO AVOID COLLISION, 130.

1. *As affected by the wind*, 130.
2. *When on the larboard or starboard tack*, 131.

3. *As to the quantity of sail to be carried*, 132.

4. *As to carrying lights*, 132.

5. *Of the application thereto of the Trinity House Regulations for Steamers*, 132.

## VII. OF THE DUTIES OF STEAM-VESSELS IN ORDER TO AVOID COLLISION, 133.

1. *Generally*, 133.
2. *Statutory regulations thereon*, 133.
3. *Of the Trinity House Regulations thereon, and the construction thereof*, 134.
  - (a) *As affecting customs of rivers at variance therewith*, 135.
4. *With reference to the rate of speed*, 136.
5. *When on the starboard tack*, 136.

## VIII. MISCELLANEOUS CASES OF —, 136.

## IX. OF THE ONUS PROBANDI IN CAUSES OF —, 137.

## X. OF THE EFFECT OF A VERDICT IN AN ACTION AT LAW ON A SUIT IN THE COURT OF ADMIRALTY IN RESPECT OF THE SAME COLLISION, 137.

## XI. OF THE OWNER'S RESPONSIBILITY FOR — THE LIMITATIONS THEREOF, AND THE EXEMPTIONS THEREFROM — see OWNERS.

## XII. OF THE RESPONSIBILITY FOR —, 138.

1. *Of masters, pilots, and others*, 138.
2. *Where occasioned by vessels of the Crown*, 138.

## XIII. PLEADINGS IN CAUSES OF —, 138.

## XIV. PRACTICE IN CAUSES OF —, 138.

## XV. COSTS IN CAUSES OF —, 139.

## XVI. MISCELLANEA, 140.

# I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF —

## 1. Generally.

1. The Court of Admiralty has jurisdiction over the whole subject matter of damage on the high seas; and the arrest of the vessel is only one mode of proceeding. The owners of a vessel damaged have their choice of three modes of proceeding in the Court of Admiralty: *viz.* against the owners, or the master personally, or by a proceeding *in rem* against the ship itself. The damage confers no lien upon the ship; but an arrest offers the greatest security for obtaining substantial justice, in furnishing a security for prompt and immediate payment. *The Volant, Merchant*, 1 W. Rob. 387.

2. An action for damage may be maintained in the Court of Admiralty, although the damaging vessel cannot be arrested by reason of her having been sunk or lost, or otherwise. The jurisdiction of the Court does not depend upon the existence of the ship, but upon the origin of the question and the locality. *Ibid.*

3. The advantage arising from a *viva voce* examination of witnesses on a question of fact coupled with science, is counterbalanced by the benefit arising from a Court which decides on written evidence being assisted by the opinions of persons versed in the particular science involved in issue. A verdict in an action at Common Law, for damage by reason of a collision, *Held* not to affect the jurisdiction of the Court of Admiralty to entertain a suit for damage in respect of the same collision, nor to be binding on the judgment of that Court in such a suit. *The Ann and Mary*, 7 Jur. 999., 2 W. Rob. 190.

4. By 3 & 4 *Vict. c. 65. s. 6.* the High Court of Admiralty shall have jurisdiction to decide all claims of damage relative to any ship or sea-going vessel, and to enforce payment thereof, whether such ship or vessel may have been within the body of a county or on the high seas at the time when the cause of action accrued.\*

5. By the same statute, *s. 4.* the High Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the

proceeds thereof remaining in the registry, arising in any cause of damage, &c.

*See post, note 7., and No. 35.*

## 2. Over foreign vessels.

6. By 9 & 10 *Vict. c. 99. s. 41.* in case of damage done by any foreign ship to any British ship, barge, boat, or other craft, whether abroad or otherwise, or any buoy or beacon in any harbour, port, river, or creek, or within three miles of the coast of the United Kingdom, and it shall appear on summary application to any Judge of His Majesty's Courts of Record at Westminster or elsewhere, or to the Judge of the High Court of Admiralty respectively, that such damage or loss has probably been sustained or arisen by the misconduct or negligence of the master or mariners of such foreign ship, such Judge may cause such foreign ship, being in any harbour, port, river, or creek, or other place within three miles of the coast, to be arrested and detained until the master, owner, or consignee shall undertake to appear and be defendant in any action which may be brought for such loss or damage, and give such sufficient security, by bail or otherwise, for all costs and damages, if recovered, as shall be directed by such Judge in case it shall appear on the trial that such loss or damage arose from such negligence or misconduct; and in such suit the person giving security shall be made defendant, and be stated to be the owner of such foreign ship; and it shall not be necessary in such suit to give any other evidence of the liability of such person to such suit than the production of the order of the Judge made in relation to such security as aforesaid; and any collector or comptroller of Customs shall, on notice served on him of the fact of such application having been made, detain such ship until the result of such application shall be made known.

7. The Court of Admiralty is authorized, under the stat. 1 & 2 *Geo. 4. c. 75.* (now repealed, but see 9 & 10 *Vict. c. 99. s. 41.*), not only to arrest a foreign ship in a cause of collision, but to hear and determine such case. Protest of foreign owner against the jurisdiction of the Court overruled. *The Christiana, Larsen*, 2 Hagg. 183.

\* 1. Prior to this statute, the Court of Admiralty had no jurisdiction in cases of collision occurring in the Thames or other places within the body

of a county. *Feltham v. Ormsley*, 3 T. R. 315., and see 2 Hagg. 398., 3 Hagg. 335., and *post*, No. 43.

8. In a cause of collision a protest against the jurisdiction of the Court on the ground that both the vessels were the property of foreign owners, and that the collision occurred whilst they were in the prosecution of their respective voyages on the high seas, overruled, the place of collision being on the English coast within the jurisdiction of the Court of Admiralty, and causes of collision being *communis juris*. *The Johann, Friederich*, 1 W. Rob. 35.

9. In an action on the case for damage by collision of the defendant's vessel on the high seas, the defendant pleaded a recovery of judgment in the foreign court at H., in the kingdom of F., against the plaintiffs for damages occasioned by the collision, as having arisen through the plaintiffs' mismanagement, and that the plaintiffs there pleaded, as matters in defence, the grievances alleged in the declaration, and that by the law of F. such judgment was final: the plea held bad, as not pleaded by way of estoppel, and for not showing that the plaintiffs were subjects of F., and bound, by reason of their allegiance, by such decision. *Quere*, whether, with such allegations, the plea could have been a bar to the action. *General Steam Navigation Company v. Guillon*, 11 M. & W. 877.

## II. OF THE RIGHT TO COMPENSATION FOR DAMAGE OCCASIONED BY COLLISION.

### 1. Generally.\*

10. Where a collision happens not by the fault of either vessel, the vessel doing the damage is not responsible to the vessel damaged. Where both parties are to blame, the loss occasioned by the damage must be apportioned between them. Where the vessel damaged is to blame, she must bear the loss; where the vessel damaging is to blame, she must make compensation to the vessel damaged. *The Woodrop Sims, Jones*, 2 Dodson, 85.

11. The general rule of international law (independent of the municipal law), by which the Court of Admiralty is governed in cases of collision, is that a vessel doing damage to another is liable to make full compensation. *The Girolamo, Guiranovich*, 3 Hagg. 186.

*See post*, note 20., Nos. 47. 120.

### 2. In cases of inevitable accident.†

12. Where damage is occasioned by unavoidable accident, or there is a reasonable doubt as to which party is to blame, the loss must be sustained by the party on whom it has fallen. *The Catherine of Dover, Davison*, 2 Hagg. 154.

\* 2. By the law of England, in cases of collision, if both vessels are to blame, each party bears his own loss. If one party can prove that the misfortune was caused by the negligence or want of skill of the other, and that he, though not wholly free from negligence, could not have avoided it by the exercise of ordinary care, he will be entitled to recover compensation for the wrong. The established rules of nautical practice, as explained by professional men, the usages and regulations of particular ports and rivers, the state of the wind, the tide, and the light, the degree of vigilance of the masters and crews, and all other circumstances bearing on the conduct and management of both vessels, will be considered in determining this question. But of the sea, as of the road, the law recognises no inflexible rule, the neglect of which by one party will dispense with the exercise of ordinary care and caution in the other. One person being in fault will not dispense with another's using ordinary care for himself. Two things must concur to support this action, a collision by the fault of the defendant, and no want of ordinary care to avoid it on the part of the defendant. *Abb. Sh.* 238.

3. In an action by a plaintiff for injury done to his vessel by collision, it is no answer that the plaintiff has received from the underwriter the amount of the loss, as he is trustee for the underwriter for what he recovers from the defendant. *1 Park on Ins.* 331.

4. In a question as to the collision of ships, if

the collision arise from invincible force or the fault of the pursuers, they cannot recover the value of the ship; if by the fault of the defenders, they are entitled to recover, and if by the fault of both, they can recover only one half. *Tynes v. Glass & Co.* (1827), 4 Mur. 167. (*Scotch Rep.*)

† 5. By the law of most maritime states (differing in this particular from the Roman Law, which leaves each party to bear his own loss), the cost of damage resulting from collision without fault in the persons belonging to either ship, is to be divided equally between them. The same rule obtains when both vessels are to blame, and when the blame cannot be detected. *Abb. Sh.* 229.

6. A brig was forced, with several other vessels, by a heavy gale, to seek shelter in the Humber, where she was brought to anchor in a proper position, with a light over her side. The B. entering the river during the night, came into collision with the brig. In a suit for damage thereby occasioned, the owners of the B. denied that theirs was the vessel that had done the damage, and alleged that if it was, the collision arose from inevitable accident owing to the weather and the darkness of the night: *Held*, that, waiving the question of identity, there was no proof that the collision arose from any absence of due care, caution, or proper seamanship of those on board the B., and suit dismissed accordingly. *The Bolina*, 3 Notes of Cases, 209.

13. In law, inevitable accident is that which a party charged with an offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill. It is not enough to show that the accident could not be prevented by the party at the very moment it occurred; but the question is, could previous measures have been adopted to render the occurrence of it less probable. *The Virgil, Wilson*, 7 Jur. 1174., 2 W. Rob. 205., 2 Notes of Cases, 499.

14. An action and cross action having been brought in respect of a collision which occurred in the night time, both suits dismissed, and each party left to pay his own costs, the Court and Trinity Masters holding the collision to have been occasioned by the darkness of the night, and that neither party was to blame. *The Shannon, Higginson*, 1 W. Rob. 463.

15. In a case of collision, in which cross actions were entered, the damage was held to have been occasioned by inevitable accident; and both suits dismissed accordingly, leaving each party to pay his own costs. *The Shannon and Placidia*, 7 Jur. 380.

16. A collision held, under the circumstances, to have been accidental, the vessel proceeded against being in the act of extricating herself from a position of danger at the time of the collision. The vessel proceeding condemned in costs. *The Thornley*, Ibid. 659.

17. A brig close-hauled on the larboard tack, beating to the south, the wind being E.S.E., was, in a very dark misty night, run foul of by a schooner having the wind free, and carrying a press of sail (square sail, topmast studding sail, fore and aft mainsail, and gaff topsail set). Neither vessel saw the other until immediately prior to the collision, when the schooner put her helm a-lee. The Trinity Masters being of opinion that the schooner was right in not porting her helm, and that the accident was inevitable, claim of the brig for damage pronounced against, and costs

refused. *The Ebenezer, Varwell*, 7 Jur. 1118., 2 W. Rob. 206.

18. In a cause of damage the collision held to have been the result of inevitable accident arising from an intense fog, and the vessel proceeded against dismissed accordingly, though she was proved to have been, at the time of the collision, carrying a press of sail beyond what was held to be strictly prudent in such a state of the weather (all her sails being set except her fore top-gallant sail), the collision not having arisen from her having so done. *The Itinerant, Russell*, 2 W. Rob. 236., 8 Jur. 132., 3 Notes of Cases, 5.

See *antè*, note 4. and No. 10., and *post*, Nos. 21. 25., and note 26.

### 3. Where both vessels are to blame.

#### (a) In suits in the Court of Admiralty.\*

19. In a case of collision in the Court of Admiralty, the Court, assisted by Trinity Masters, Held, that both vessels were in fault, and that the J. was most in fault; and decreed that the whole damage sustained by the owners of the P. and her cargo, which was sunk and lost, as well as the damages and expenses given against the P., and the costs on both sides, should be borne equally by both the parties to the suit. *Petersfield v. The Judith, Randolph* (1789), Abb. Sh. 231.

20. In a case of collision, in which both vessels were to blame, one of which was with her cargo sunk and lost, and the owners of which vessel were the parties instituting the suit, Held, that the owners of the other vessel were liable for two-thirds of the damage; but such decision reversed on appeal to the House of Lords, where it was Held, that the owners were liable for a moiety of the damage only, provided that did not exceed the value of their own ship. *Le Neve v. The Edinburgh and London Shipping Company* (1822), 1 S. 378. (N. E. 356.), 20 F. C. 580. (1824);

\* 7. When it is doubtful which vessel was to blame, or whether such a degree of blame may not be imputable to each as to render it difficult to decide who, if either, ought to make compensation, it is preferable to proceed in the Court of Admiralty, because, if it should appear that both the ships were equally to blame, but that only one was materially damaged, this Court has a peculiar and singular jurisdiction to decree that the owners of each vessel shall make good a moiety of the entire damage, although in a Court of Law, when the mis-

chief done is the result of the combined neglect of both parties, both are *in statu quo*, and neither can recover any compensation from the other. 2 Chitty's Gen. Prac. 515., and see *Vernal v. Gardner*, 3 Tyr. Rep. Exch. 85.

8. It appears that in the Court of Admiralty, when both vessels are in fault, the value of the cargo damaged or lost by the collision is to be included in the estimate on which the apportionment is made. Abb. Sh. 239.

*Hay v. Le Neve*, 2 Shaw's Scotch Ap. 395., 1 Bell, 581. n. 3., Abb. Sh. 230.\*

21. In cases of collision, if both vessels be to blame, the loss is equally apportioned. If the collision be accidental, each bears its own loss. *The Cell, Taylor*, 3 Hagg. 328. n.

22. In a cause of damage, in which a cross action had been instituted, and the Trinity Masters *Held* that both vessels were to blame, the Court decreed the damages, costs, and expenses of both parties to be thrown together and to be equally divided. *The Washington*, 5 Jur. 1067.†

23. In an action for damage, both parties in the cause were *Held* to have been in fault, and the loss decreed to be borne equally between them; the vessel proceeded against being condemned in costs by Sir John Nicholl, who was afterwards succeeded by Dr. Lushington as Judge of the High Court of Admiralty. On a subsequent application to the Court (Dr. Lushington), to vary the decree as to the costs, on the suggestion that the decree had not been accurately taken down, and had been meant to leave each party to pay his own costs, the Court (Dr. L.), though refusing to allow the accuracy of the registrar's minute to be questioned, *Held*, that the costs ought, on the authority of cases cited, to be borne by each party, and that Sir J. Nicholl would have so altered the decree could he have been applied to, and therefore altered the decree accordingly, but declined to make any order as to the

costs of such application. *The Monarch, Bell*, 1 W. Rob. 21.

24. Whenever there is a collision in which both vessels are in fault, a positive rule of the Court of Admiralty requires the damage done to both ships to be added together, and the combined amount to be equally divided between the owners of the two. *De Vaux v. Salvador*, 4 Ad. & E. 431., Abb. Sh. 232.‡

25. In collision cases, if both vessels be to blame, the loss, according to the law of the Admiralty, is to be divided between them. If it be a matter of mere accident, then each party must submit to that which is considered an act of Providence, not the misconduct of any individual. *The Sappho*, 9 Jur. 560.

26. In cases of damage, the Court of Admiralty has the great advantage of being able, where both parties have been to blame, to apportion the loss between the two vessels, according to their respective degrees of culpability. *The General Steam Navigation Company v. Tonkin (The Friends)*, 4 Moore, 322.

*See post*, No. 61.

(b) *In suits at common law.* §

27. The plaintiff cannot recover, unless the injury is attributable entirely to the fault of the defendants; if he were partly in fault, but the defendants might with care have prevented the accident, he cannot

\* 9. In a cause of damage, both vessels having been held to blame, the damage directed to be apportioned between the owners of both vessels, and, on the authority of the case of *Hay v. Le Neve*, each party to pay his own costs. *The Oratava*, (1839), 5 Monthly Law Mag. (Notes of Cases), 45.

10. In a cause of damage arising out of a collision, in which both vessels were held to blame, the Court directed the amount of damage to be brought in and divided, and each party to pay their own expenses. *The De Cock*, (1839), 5 Monthly Law Mag. (Notes of Cases), 303.

† 11. A British and Danish ship having come into collision, in consequence (according to the opinion of the Trinity Masters) of the one vessel having starboarded instead of porting her helm, and of the other vessel not having kept a proper look-out, no blame being imputable to the pilot of the ship proceeded against, *Held* that the damage must fall equally on both parties. *The Seringapatam*, 5 Notes of Cases, 66.

‡ 12. A learned writer in the Law Magazine (vol. xvii. p. 327.) questions the existence of this rule in the Court of Admiralty, as not founded on any recorded authority of that Court, and as being inequitable and contrary to the received doctrine

of the maritime law generally. In support of the latter position he cites the following authorities on maritime law: Emerigon (*Traité d'Assurance*, ch. 12. s. 4. § 2.) as limiting the general rule of the French Ordinance as to equal partition to the case of inscrutable fault only, and the *Code de Commerce* (Art. 407.) as expressly so confining it: "S'il y a doute dans les causes de l'abordage, le dommage est réparé à frais communs, et par égales portions, par les navires qui l'ont fait et souffert;" and further, Pardessus (*Cours de Droit Commer.* tom. iii. p. 88., De l'Abordage), "S'il est prouvé qu'il y a faute de deux parts, chacun supporte sa perte. Mais s'il est impossible de dire quel est celui dont la faute a occasionné l'abordage, on estime, en égard à la qualité de chaque navire et des parties endommagées le tort qu'ils ont éprouvé, et le prix de cette évaluation, additionné en une même masse, est divisé pour être supporté également par chacun des navires qui se sont heurtés, c'est-à-dire, par moitié." The cases in the text, however, seem conclusive on the point.

§ 13. In case for injury by the negligent driving of the defendant's servant, *Held*, that the plaintiff could not recover where it appeared that the accident was partly occasioned by the plaintiff's own want of care and negligence. *Woolf v. Beard*, 8 C. & P. 373.

maintain his action. *Vanderplank v. Miller*, M. & M. 169. (Tenterden.)

28. In an action on the case for running down a ship, neither party can recover when both are in the wrong; but the plaintiff may recover, although he might have prevented the collision, provided he was in no degree in fault in not endeavouring to prevent it. *Vennall v. Garner*, 1 C. & M. 21., 3 Tyr. 85.

29. If in an action for the negligence of the defendant's servants in managing a barge, so that the plaintiff's barge was run down, it appears that the accident happened from circumstances which persons of competent skill could not guard against, the plaintiff will not be entitled to recover; nor will he if his men had put his barge in such a place that persons using ordinary care would run against it; nor if the accident could have been avoided but for the negligence of the plaintiff's own men in not being aboard his barge at the time when it was lying in a dangerous place. *Luck v. Seward*, 4 Car. & P. 106. (Tenterden.)

30. The question in collision cases is, whether the plaintiff by his negligence or improper conduct substantially contributed to the occurrence of the injury of which he complains; not to the amount of it, but to its occurrence. Therefore, where a brig was carrying her anchor in a position contrary to the bye laws of the river Thames at the time when she came in collision with a barge, *Held*, that the improper carrying of the anchor would not of itself be sufficient to make the owner of the brig responsible in damages, if the barge, by departing from the known rule of the river, brought herself into the situation in which the brig struck her, although, but for the position of the anchor, the collision would not have produced the injury complained of. *Sills v. Brown*, 9 Car. & P. 601.

31. In an action against the captain of a steam-vessel for swamping a loaded wherry on the river by a swell produced by a too rapid rate of passage, the jury, to find for the plaintiff, must be satisfied that the mischief was occasioned by the swell alone; and if they think it doubtful whether it was or not, or think that the plaintiff contributed to the injury he sustained by his own improper conduct, either in mismanaging or overloading the boat, they must find their verdict for the defendant. *Luxford v. Large*, 5 Car. & P. 421. (Denman.)

32. In an action to recover damages for the upsetting of a barge laden with coal

belonging to the plaintiffs, it appeared that a small steam-vessel belonging to the defendants, called *The Water Lily*, was proceeding down the river, preceded by a larger one, called *The Ramona*, and in consequence of the swell occasioned by one or both of these vessels, the plaintiff's barge was swamped, and the coals lost. The amount of damage was about 80*l*. The jury returned a verdict for the plaintiff for 20*l*., assigning as a reason for giving that sum only, that they did not think *The Water Lily* to have been the sole cause of the accident, as the barge was not properly trimmed: the Court being satisfied with the evidence, that it justified the verdict, refused a new trial. *Smith v. Dobson*, 3 Scott, N. S. 336., 3 Mann. & Gr. 59.

33. Where in an action on the case for damages, by running foul of the plaintiff's vessel, the jury, on being asked as to the grounds of their verdict in giving less than the damage proved, replied, that they considered there were faults on both sides: *Held*, nevertheless, that the plaintiff was entitled to recover; as, although in a degree in fault, *semble*, it must be such as tended to the injury to preclude him from recovering. *Raisin v. Mitchell*, 9 C. & P. 613. (Tindal.)

*See ante*, Note 7.

#### 4. Of the priority of lien of a successful suitor in a cause of damage.

34. The successful suitor in a cause of damage has a lien on the property condemned, to the full extent of the owner's interest in the vessel. His claim is paramount to the extent of the value of the vessel at the period of this collision, and takes precedence of claims of mortgagees or bottomry bondholders prior to such period. His lien also extends to subsequent accretions in the value of the ship, arising from repairs effected after the period when the damage was occasioned, and at the expense of the owner, or of a stranger, who, being cognisant of the collision, effected such repairs on the security of bottomry; but *aliter* where the party effected the repairs on such security in ignorance of the collision. *The Aline, Stockebye*, 1 W. Rob. 111. 120.

35. In a cause of collision, payment of damage to the successful party out of the proceeds of the ship (sold under the decree of the Court) opposed by a party claiming a preferable lien thereon under an agreement for bottomry, the jurisdiction

of the Court to entertain whose claim was denied, the Court, without in the first instance pronouncing for or against its jurisdiction over such a claim, proceeded, as having undoubted jurisdiction in the cause of damage, to adjudicate upon the quantum of proceeds to which the successful suitor was entitled in compensation for the damage; and such proceeds not being sufficient to satisfy the claims, to investigate, and ultimately to decide in favour of the priority in part of the bottomry claimant's lien, directing the share of proceeds due in respect of his claim to remain in the registry until notice had been given to the owner; and intimating, that on the owner appearing and showing sufficient cause against the jurisdiction of the Court, it would direct such share so to remain until a good title thereto should be established, but that in that event the claimant in the cause of damage, the proportions of the proceeds allotted to him being insufficient to satisfy his claim, might make a good title to such share. *Ibid.*

*See post, No. 142.*

5. *Of the distribution of proceeds amongst different claimants, in respect of the same collision.*

36. A foreign ship having been condemned in the damage arising from a collision between her and another vessel; in an action brought by the owners of such vessel and of a portion of the cargo, the ship was sold under a decree of the Court, and the proceeds brought in. On the same day on which the decree for the damage was pronounced, an action was entered for the owners of the remaining cargo of the vessel damaged. The proceeds being insufficient to meet both claims, application of the owners of the remainder of the cargo to share *pro rata* with the first plaintiffs rejected, on the ground that parties who had obtained the decree could not be deprived of the benefit of it by parties coming in afterwards or on the day the decree was pronounced; but, *semble*, such parties would have been entitled to share had they brought their action prior to the decree being pronounced. *The Saracen*, 10 Jur. 396., 4 Notes of Cases, 490.

III. OF THE MEASURE OF COMPENSATION FOR —

1. *General principles with regard to —*

37. In cases of damage the general principle is that a person who is damaged by the fault of another is entitled to a full compensation for such damage and loss. *The Matchless*, 10 Jur. 1017.

38. The rule which prevails in insurance cases\*, of deducting one-third of the cost price when new articles are supplied in lieu of old, is not applicable to cases of collision; the claim for indemnity in the former being *ex contractu*, but in the latter *ex delicto*, and therefore entitling the party to *restitutio in integrum*, i.e. perfect indemnification for the injury done. In a cause of collision, report of registrar and merchants as to the amount of damage, objected to on the ground of such deduction, referred back for alteration on the principle above stated. *The Gazelle*, *Hurst*, 2 W. Rob. 279., 8 Jur. 429., 3 Notes of Cases, 75.

39. The allowance for loss of freight, detention, &c., must be made, on the same principle of compensation. The gross freight is not to be allowed, but deductions must be made therefrom for the expenses incident to the receipt of freight, such as wages, pilotage, lighterage, tonnage, and other dues. The allowance by the registrar and merchants of discount on the payment of the accounts for the repairs by the party doing the damage, approved of by the Court. *Ibid.*

40. In an action for damages to the plaintiff's vessel by collision with the defendants', through negligence of the defendants' servants, *Held*, that the defendants were not entitled to deduct the amount of damage received by the plaintiff from insurers. *Yates v. White*, 4 Bing. N. S. 272., 5 Scott, 640.; *S. P. Jones v. White*, 2 Jur. 363., 1 Arn. 85., and see *Mason v. Sainsbury*, 3 Dougl. 60.

*See ante*, note 8.

2. *Consequential damage.*†

41. The Court can entertain a question of consequential damage with a view to

\* 14. Where a ship partially damaged has been repaired by the owners, the insurers are only liable to the amount of two-thirds of the cost of repair, unless circumstances be shown to take the case out of the ordinary rule of deduction of one-third for

the benefit of the owners from the repairs. *Poingdestre v. Royal Exchange Assurance Company*, R. & M. 378. (Best.)

† 15. By the law of the Court of Admiralty, in cases of collision, when it is clearly proved that

*This does not apply to cargo lost - nothing from the ship's crew, but rather to the cargo on board or freight - there is no reason to suppose that the cargo is lost - but found only in a vessel to save the - Jurist 1829 p 286*

compensation. An article of a libel given in a cause of damage by the vessel run down, and pleading that in consequence of the collision she was prevented completing a salvage service she was at the time engaged in, which occasioned to her a loss of 50*l.* by a diminution to that amount in the salvage remuneration to her, admitted to proof. *The Betsey Caines, Wilson*, 2 Hagg. 30.

42. In a collision cause the vessel run foul of being a fishing smack on a voyage to receive a cargo of lobsters, and so damaged that it became necessary to hire another smack for the purpose, the Court (having condemned the vessel doing the damage in repairs and costs), after argument, directed a reference to registrar and merchants, to report the amount of freight paid to the vessel substituted for the smack, in order that the same might be allowed as consequential damage. *The Yorkshireman, Foreman*, *Ibid.* n.

43. In a case of collision, in which the damage to the ship was pronounced for, claim of consequential damage to cargo, arising from the vessel having been run ashore in consequence of the collision, rejected. *The Eolides, Malngram*, 3 Hagg. 367.

44. *Quære*, had the Court jurisdiction in such a case (prior to the 3 & 4 *Vict.* c. 65.), such damage having occurred on land. *Ibid.*

45. In an action for negligence in running down a ship of the plaintiff's, alleging as special damage the having been condemned in the Admiralty Court to pay a sum of 45*l.* for salvage and the costs of suit there, it appearing that the plaintiff had made a very insufficient tender of 20*l.*, *Held*, that he could not recover the costs so incurred; the question in such cases for the jury being, whether the plaintiff had acted as a prudent man would reasonably have done, and if so, the costs might be recovered. *Tindall v. Bell*, 11 M. & W. 228.

*See post*, No. 131.

#### IV. OF THE RIGHTS AND RESPONSIBILITIES OF CARGO IN CASES OF — \*

#### V. OF THE DUTIES OF VESSELS GENERALLY IN ORDER TO AVOID A COLLISION.

##### 1. *General rules with regard to* — †

46. No vessel, especially a steamer, should unnecessarily incur the probability

one vessel is the wrong-doer, the owners of that vessel are, to the extent of its value, responsible for all the damage which occurred through the default or neglect of her master and crew; not only the immediate damage, but what is called *consequential damage*, that is, all damage which may subsequently take place that could be fairly attributed exclusively to the act of the original wrong-doer. *The Countess of Durham*, (1840), 9 Monthly Law Mag. (Notes of Cases), 279.

16. The A. came into collision with the B., rent her mainsail and did other damage; the B. was ultimately stranded, in consequence, as it was contended on her behalf, of her being so deprived of the use of her mainsail. In an action for damage, the A. admitted she was to blame in causing the collision, and tendered 10*l.* to cover the damage thereby occasioned, contending that the stranding of the vessel was occasioned, not by the damage arising from the collision, but by the want of skill of the master of the B. The Trinity Masters were of opinion that the master of the B. had not exercised such a sound judgment in the proceedings subsequent to the collision, as a master of *ordinary skill and experience* should have done; the Court pronounced for the damage happening immediately on the collision, but not for the consequential damage claimed (*i. e.* that occasioned by the vessel stranding). *Semble*, however, that the B. being merely a small schooner, her owners would have been entitled to the consequential damage claimed had the master exercised only *ordinary skill and experience*. *Ibid.*

17. The Panther, bound from Gallipoli to St. Petersburg, came into collision in the Channel with the Aline, a Russian vessel, and was compelled to put into Newhaven to repair the damage thereby occasioned. In an action of damage instituted by the owners of the Panther against the Aline, claiming compensation for the injury sustained, and for the consequential loss caused by her detention at Newhaven beyond the Baltic season, the Court pronounced for the damage generally, and referred the same and the consequential damage to the registrar and merchants, observing that before pronouncing for the consequential damage it would require it to be satisfactorily proved that every possible exertion was made by the owners of the Panther to arrive at St. Petersburg, get in a cargo, and come back again. *The Aline* (1839), 5 Monthly Law Mag. (Notes of Cases), 302.

\* 18. By the law of England, the liability of cargo on board the wrong-doing vessel to contribution could only lead to circuity of action, inasmuch as the freighter might recover the amount paid by him from the owners of the ship. But an action may be maintained by the owners of goods lost or damaged by collision, against the owners of the vessel which can be proved to have been in fault. *Abb. Sh.* 239.

19. It appears that in the Court of Admiralty, when both vessels are in fault, the value of the cargo damaged or lost by the collision is to be included in the estimate on which the apportionment is made. *Ibid.*

† 20. In coming into harbour, it is the duty of



of a collision by a pertinacious adherence to the strict rule of navigation, which, however, is not to be lightly infringed upon. *The Hope, Hepburn*, 1 W. Rob. 157.

47. If circumstances arise evidently and clearly requiring prudential measures, and those measures are not taken, and the natural result of such omission is accident, the Court would be inclined to hold the party liable, even if such result were only possible. *The Itinerant, Russell*, 2 W. Rob. 240., 8 Jur. 131., 3 Notes of Cases, 5.

48. It is the duty of all vessels, though they may thereby be forced to go out of their course, to avoid by so doing all risk of a collision. *The Blenheim*, 10 Jur. 79., 4 Notes of Cases, 393.

49. Masters of vessels navigating at night are bound to use all proper precautions for avoiding the chances of collision. *The Virgil, Wilson*, 2 W. Rob. 201.

#### 2. To keep a proper look-out.\*

50. To constitute a good look-out there must be a sufficient number of persons stationed for the purpose, who must know and be able to discharge that duty. *The George*, 9 Jur. 670., 4 Notes of Cases, 161.  
*See post*, Nos. 76. 104.

#### 3. As to the complement of men.

51. In a cause of collision, blame is not imputable to a vessel as being insufficiently manned, unless it can be shown that in

consequence of the deficiency of hands on board her she was not under sufficient control. *The Hope, Hepburn*, 1 W. Rob. 156.

#### 4. With reference to vessels at anchor.†

52. A vessel in motion is bound to steer clear of a vessel at her moorings, and nothing can excuse her from making compensation but unavoidable accident, the *vis major* which no human skill or precaution could have guarded against. *The Girolamo, Guiranovich*, 3 Hagg. 173.

53. It is the duty of every vessel seeing another at anchor, whether in a proper or improper place, and whether properly or improperly anchored, to avoid, if practicable and consistent with her own safety, any collision. *The Batavier*, 10 Jur. 19., 4 Notes of Cases, 356.

*See post*, Nos. 79. 108. 110.

#### 5. In cases of launch.

54. Notice of an intended launch should not be a mere general notice, but notice of such reasonable kind, varying with the local circumstances, as will prevent vessels navigating the river from incurring any danger thereby; and, in addition to such reasonable notice, it is the duty of those in charge of the launch to keep a good look-out, and see that the river is clear. *The Blenheim*, 10 Jur. 79., 4 Notes of Cases, 393.

*See post*, No. 111.

mariners to provide for their own safety and that of others, and not to wait till the moment of danger; but if a party make every preparation against approaching danger, it will not be sufficient to subject him in damages for injury to another vessel by collision, that in the moment of danger he did not make use of every means that might appear proper to a cool spectator; there must be gross negligence. *Burns v. Stirling* (1819), 2 Mur. 96. (Scotch Rep.)

\* 21. A large steamer proceeding on a dark night in the Frith of Clyde, a very thronged thoroughfare, at the rate of from twelve to fourteen miles an hour, came in collision with a small schooner, which, being deeply laden and proceeding against the tide with a very light wind, had very little way on her, and was therefore incapable of altering her position. The schooner showed no lights and was not discovered by the steamer until close upon her, when a collision ensued, in consequence of which the schooner almost immediately sunk: *Held*, that the steamer was responsible for the damage, her watch and look-out, though sufficient under ordinary circumstances, not being sufficient considering the darkness of the night and the

rate of speed of the steamer. *The Londonderry* (High Court of Admiralty of Ireland), 4 Notes of Cases, supplement xxxi. Decision affirmed on appeal to the High Court of Delegates, Ireland, *Ibid.* xliii.

† 22. The *Helena*, a brig of 116 tons, came to anchor in Mahomet's Bay on the coast of Spain. His Majesty's steamer *Volcano* ran for shelter from a gale into the same bay, where she took up an anchorage two cables length from the *Helena* on her starboard bow, with her small bower anchor only (weighing 16 cwt.) and a chain cable an inch and a quarter thick. About midnight a hurricane arose and caused the *Volcano* to drift, the anchor broke, and though another was dropped, the *Volcano*, by a sudden sheer, drifted athwart-hawse of the brig, and having again come into collision with her, the brig ultimately went down. In a cause of damage in respect of such collision, instituted by the owners of the brig against the commander of the steamer, *Held*, that there was a want of proper caution in the position which the *Volcano* originally took up, and in not letting out more cable and a second anchor. Damage pronounced for accordingly, with costs. *The Volcano*, 3 Notes of Cases, 210.

# VI. OF THE DUTIES OF SAILING VESSELS, IN ORDER TO AVOID COLLISION.\*

## 1. As affected by the wind.

55. The law imposes upon a vessel having the wind free the obligation of taking proper measures to get out of the way of a vessel close-hauled. In a collision case under such circumstances damage pronounced for against the vessel having the wind free. *The Woodrop-Sims, Jones*, 2 Dodson, 87.

56. A vessel having the wind free is bound to steer clear of another close-hauled. *The Chester, Lawson*, 3 Hagg. 318.

57. It is the duty of a vessel having the wind free to steer clear of a vessel approaching her in an opposite direction, whether a steamer or sailing vessel. *The Celt, Taylor*, 3 Hagg. 326.

58. The rule is clear, that a vessel with a free course must give way to a vessel beating up to windward and tacking. If a collision occur between such vessels, the *onus* of proof lies on the vessel having a free course to show that all possible skill was used on her part, and that the collision arose from the fault of the other vessel, or was unavoidable. A foreign vessel, therefore, which, while in charge of a duly licensed pilot, having her course free, ran down a barge beating up the river with the tide against the wind, condemned in the damage and costs, such *onus* being held not to have been discharged by her sufficiently to make out a case of exoneration. *The Baron Holberg, Blom*, 3 Hagg. 215.

59. If a vessel at sea is going close-hauled to the wind, and another, meeting her, is going free, the rule of the sea is for

the latter vessel to go to leeward; and although such vessel may either go to leeward or windward, as she best can, yet she ought, as a general rule, to suppose that the vessel going to windward will keep her position. *Handyside v. Wilson*, 3 Car. & P. 528.

60. The rule of the river is, that if a light vessel is going free, and a loaded vessel is coming close-hauled to the wind, it is the duty of the loaded vessel to keep her course, and of the vessel going free to bear away. *Sills v. Brown*, 9 Car. & P. 601. (Coleridge.)

61. An action for damage brought by the A., which, being close-hauled and on the starboard tack, was run foul of by the B., which had the wind free, dismissed, the A. having, with a view to avoid the collision, wore round and gone to leeward; the Trinity Masters holding that, being close-hauled, she ought to have continued her course, and that the collision was occasioned by her not having done so; but the B. being held to blame in not having rendered assistance to the A. after the collision, her owners condemned in costs. Application on behalf of the A., that the B. might be condemned in half the damage, both parties being held to have been blameable, rejected, the collision itself being imputable to the A. only. *The Celt, Taylor*, 3 Hagg. 321.

62. A vessel having the wind free, and on the larboard tack, came in collision, in the river St. Lawrence, with a vessel sailing by the wind, on the starboard tack: Held, that the vessel having the wind free should, on that ground, have given way to the other vessel, and damage pronounced for accordingly. *The Speed, Ellis*, 2 W. Rob. 225.†

\* 23. The law imposes upon the vessel having the wind free the obligation of taking proper measures to get out of the way of a vessel close-hauled, and of showing that it has done so. 2 *Chitty's Gen. Prac.* 514.

24. If two vessels approach one another both having a free wind, each keeps to the right; that is, the one on the starboard tack keeps on or luffs, and the other, if it be necessary to alter her course, keeps off. So, if two vessels approach one another close-hauled on different tacks, and it is doubtful which is to windward, the vessel on the starboard tack keeps on her course, and the other gives way and keeps off; that is, each goes to the right, and the vessel on the starboard tack has the preference. The only exception to this is, that if the vessel on the larboard tack is so much to windward that, in case both persist, the vessel on the starboard tack will strike her to leeward and abaft the beam, then

the vessel on the starboard tack must give way, as she can do it more easily than the other. *Dana's Seaman's Manual*, 71. Another rule is, that if one vessel be going dead before the wind, and the other going free on the starboard tack, the latter must luff and go under the stern of the former. *Ibid.*

25. These rules are particularly intended to govern vessels approaching each other under circumstances that prevent their course and movements being readily discerned with accuracy, as at night or in a fog. At other times circumstances may render it expedient to depart from them. A steamer is considered as always sailing with a fair wind, and is bound to do whatever would be required of a vessel going free. *Ibid.* 188.

† 26. The *Boreas*, going up Channel on the larboard tack, came into collision during the night, and off Beachy Head, with the *Richmond*, coming

63. In the Trinity House regulations, viz. "Whereas the recognised rule for sailing vessels is, that those having the wind fair shall give way to those on a wind," the expression "*giving way*" means they shall get out of the way by whatever may be the proper measures, whether it be by porting or starboarding the helm. *The Gazelle*, 10 Jur. 1065.

*And see the next section.*

## 2. When on the larboard or starboard tack.\*

64. A vessel having the wind abeam, and being on the larboard tack, ran foul of and sunk another close-hauled on the starboard tack. Damage pronounced for with costs. Decision affirmed on appeal. *The Chester, Lawson*, 3 Hagg. 316.

65. Of two vessels, A. and B., beating to windward on opposite tacks, it is the duty of the A., the vessel on the starboard tack, to keep her course; and of the B., the vessel on the larboard tack, to give way. An action brought by the A. against the B. for damage in consequence of a collision, which was occasioned by the A. bearing up instead of keeping her course, dismissed with costs. *The Jupiter, Henck, and Note IX. Martz*, 3 Hagg. 320.

66. A foreign vessel, A., on the starboard tack, having run down a barge, B., on the larboard tack, the A. having altered her course to avoid B., which she hailed to keep her luff, but which was not done, *Held* to have occasioned the collision, it being her duty, as being on the starboard tack, to keep her course, and the duty of B., on the larboard tack, to give way as she did. *The Carolus, Rotgers, note to The Gladiator, Butten*, 3 Hagg. 343.

67. Where a light vessel, A., on the larboard tack, having the wind free, meets a laden vessel, B., close-hauled and on the starboard tack, it is the duty of the A. to give way, and of the B. to keep her course. In a cause of damage instituted against the A. in consequence of a collision occasioned by her not having given way to the B., but having starboarded instead of ported her helm, damage pronounced for, with costs. *The Harriet, Bulmer*, 1 W. Rob. 182.

68. In a case of collision arising between a vessel close-hauled on the larboard tack and another vessel close-hauled on the starboard tack, the vessel on the larboard tack condemned in the damages and costs for not having given way according to the acknowledged rule of navigation, that, in such cases, vessels on the starboard tack shall keep their course, and vessels on the larboard tack give way. *The Alexander Wise, Coulson*, 2 W. Rob. 65.

69. A schooner on the larboard tack, and having the wind free, having come in collision with a sloop on the starboard tack, condemned in the damage and costs. *The Anne and Jane, Boyce*, 2 W. Rob. 100.

70. The long-established rule for the vessel on the larboard tack to give way, and that on the starboard tack to keep her course, must be strictly adhered to. Where it is difficult for a vessel close-hauled on the larboard tack to judge whether an approaching vessel on the starboard tack was standing close to the wind or a little off, it is, nevertheless, her duty to give way; and *semble*, even if she have the wind free: a vessel so situated condemned in the damage arising from a collision *held* to have been

down Channel on the starboard tack. The Trinity Masters were of opinion that the Richmond had the wind sufficiently free to enable her to have avoided the collision, and that there was not a proper look-out on board her, but that the evidence was very contradictory thereon, and that the collision might be attributed a good deal to accident. The Court condemned the Richmond in the damage. *The Richmond* (1838), 3 Monthly Law Mag. (Notes of Cases), 259.

27. The rule of the Trinity House is, that when two vessels approach each other on opposite tacks, especially when one is close-hauled and the other has the wind free, the latter must give way, whether on the larboard or starboard tack, but if both have the wind against them, the one on the larboard tack must give way, and the one on the starboard tack keep her course. *The Seringapatam*, 5 Notes of Cases, 63.

\* 28. It would seem\* that usually steam-boats

should go to the starboard; but the general rule of navigation for other vessels crossing each other in opposite directions is for the vessel on the starboard tack to keep her course, and for that on the larboard tack to give way. 2 *Chitty's Gen. Prac.* 515.

29. A vessel on the larboard tack should give way to a vessel on the starboard tack. Damage pronounced for accordingly against a vessel which, being on the larboard tack, had not given way. *The Jay* (1840), 9 Monthly Law Mag. (Notes of Cases), 208.

30. Where two vessels are sailing, one on the larboard and the other on the starboard tack, and both as near the wind as they can, it is the duty of the vessel on the larboard tack to give way, and of the other to keep her course. If both vessels are beating to windward close-hauled, this rule of navigation does not apply. *The Richmond* (1838), 3 Monthly Law Mag. (Notes of Cases), 259.

occasioned by her having put her helm alee instead of so giving way; and notwithstanding the owners of the vessel proceeded against had obtained a verdict in an action at law brought by them against the owners of the other vessel in respect of the same collision. *The Ann and Mary*, Ibid. 189. 196., 7 Jur. 999.

71. When two vessels are approaching each other in the night time in opposite directions, it is the duty of the vessel on the larboard tack immediately to give way, notwithstanding she may be close-hauled, and that the other vessel on the starboard tack, though also close-hauled, has the wind free to the extent of three points; and *semble*, if she have the wind free to a greater extent. Damage pronounced for in such a case. *The Traveller*, 2 W. Rob. 197., 7 Jur. 1094., 2 Notes of Cases, 476.

72. When two vessels are approaching each other on opposite tacks, the vessel on the larboard tack is to bear away so early and effectually as to prevent all chance of a collision occurring. A ship condemned in the damage arising from a collision occasioned by her not having so acted. *The John Brotherick*, 8 Jur. 276.

73. A vessel, which, being on the larboard tack, came into collision with another vessel on the starboard tack, condemned in the damage, she having endeavoured to pass to windward of, instead of having given way to, the vessel on the starboard tack. *The Mary, Stewart*, 2 W. Rob. 244.

74. The application of the Trinity House regulations with respect to two vessels meeting each other, the one on the larboard and the other on the starboard tack, depends on the presumption that the two vessels are directly opposite each other, and is not intended to apply when the heads of the respective vessels are lying in different directions. *The London Packet, Britt*, Ibid. 213., 2 Notes of Cases, 503.

*See antè, Notes 24. 26, 27., No. 62.\**

### 3. *As to the quantity of sail to be carried.*

75. The *Jane*, close-hauled and on the larboard tack, the wind being W.N.W., and the night hazy and very dark, was, when off Coquet Island in the port of Shields, run foul of by the *Virgil*, snow-rigged, steering south, having the wind four points free and carrying studding sails. Damage pronounced for with costs, the Trinity Masters being of opinion that the *Virgil* was to blame in not being placed under more reduced sail, as being on a coast where there was considerable traffic. *The Virgil, Wilson*, 2 W. Rob. 201., 7 Jur. 1174., 2 Notes of Cases, 699.

76. In an action on the case for running down the plaintiff's brig, it was proved that the defendant's vessel was sailing in the Channel before the wind having her studding sails set at night, and that the plaintiff's brig was sailing by the wind, and the jury found a verdict for the defendant. The Court granted a new trial on payment of costs, for the purpose of further investigating the facts, as there was some doubt as to the propriety of carrying studding sails at such a time and in such a place, and also as to whether the defendant's captain had kept a proper look-out. *Jamesson v. Dunkeld*, 12 Moore, 148.

*See antè, Nos. 17, 18.*

### 4. *As to carrying lights.†*

77. It has never been laid down as a general principle that merchant vessels ought constantly to carry lights, though under certain circumstances it may be right and expedient to do so. *The Rose, Gilmore*, 2 W. Rob. 4.; *The Columbine, Norwood*, Ibid. 33.

*See antè, Note 21., and post, Nos. 94. 104.*

### 5. *Of the application thereto of the Trinity House Regulations for steamers.‡*

78. The rule lately established with re-

\* See the Trinity House regulations, *post*, Note 39.

† 32. In a case of collision the Trinity Masters held that one of the vessels, a British brig, was to blame in not having had a light, or one ready to exhibit, in order to show her situation and course. *The Oratava*, (1839), Monthly Law Mag. (Notes of Cases), 45.

‡ 33. See the Trinity House regulations, referred to *post*, Note 39.

34. The rule of the Trinity House with regard to steam-vessels porting their helms on meeting

each other, in order to avoid collision, does not apply, especially in the regulating part of it, to the case of a sailing vessel not putting her helm a-port on meeting a steam-vessel, but it does not therefore follow that the ordinary rules of navigation do not apply, and that the spirit of the order may not be exactly those principles which would have been applied to the case if no such order had been issued. *The City of London*, 4 Notes of Cases, 40.

35. A sailing vessel, having the wind free, and meeting a steam-vessel in an opposite direction,

spect to steamers, *viz.* that when two vessels are approaching each other in a straight line each is to put the helm a-port, is to be acted upon by sailing vessels in similar positions. *The Ann and Mary*, 2 W. Rob. 196., 7 Jur. 999.

79. A vessel coming up the Thames on a dark night with the wind at south and preparing to anchor, if she descried another vessel approaching her in a straight line, ought to port her helm and pass the approaching vessel on the larboard side before rounding to and anchoring, but if she has starboarded her helm *before* seeing the other vessel she will not be held to blame for a collision ensuing, although the approaching vessel, not aware of the intention of the other vessel to anchor, has herself observed the Trinity House rule and taken her own measures on the supposition that the other vessel would pass to leeward of her. *The Shannon and Placidia*, 7 Jur. 380.

80. A steam-vessel going down Channel on a dark night, on seeing the lights of a ship ahead, ported her helm but did not put it hard a-port in the first instance. The ship, which was coming up Channel, mistook the lights of the steam-vessel for those of a lugger at anchor, and starboarded her helm for the purpose of passing within hail of her, in consequence of which a collision took place. *Held*, that the steamer (though the collision would have been avoided had she put her helm hard a-port in the first instance) did all she was called upon to do, having reason to expect that the ship would either have kept her course or put her helm to port, and that the ship was in culpable error in starboarding instead of porting her helm, as some uncertainty must have existed as to the character of the vessel carrying the lights, and that she was therefore liable for the damages occasioned by the collision. Damage

pronounced for accordingly. *The Sappho*, 9 Jur. 560.

*See ante*, No. 17.

## VII. OF THE DUTIES OF STEAM-VESSELS IN ORDER TO AVOID COLLISION.

### 1. Generally.\*

81. Steam-vessels, not receiving their impetus from sails but from steam, are comparatively independent of the wind, and should always be under command. They should always give way to sailing vessels. *The Shannon, Pennefather*, 2 Hagg. 175.

82. Steamers are a new species of vessel calling forth new rules and considerations. They are of vast power, liable to inflict great injury, and particularly dangerous to coasters if not most carefully managed, yet they may at the same time with due vigilance easily avoid doing damage, for they are much under command. The owners of sailing vessels have a right to expect that steamers will take every possible precaution. *The Perth, Spink*, 3 Hagg. 415.

83. A steamer can be stopped in nearly her own length. *Ibid.* 417.

*See ante*, No. 46., *Note* 25., and *post*, No. 111.

### 2. Statutory regulations thereon.

84. By 9 & 10 Vict. c. 100. s. 9., every steam-vessel when meeting or passing any other steam-vessel shall pass as far as may be safe on the port side of such other vessel, and every steam-vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fair-way or mid-channel of such river or channel which lies on the starboard side of such vessel, due regard being had to the tide, and to the position of each vessel

kept on her course, but the steamer ported her helm. A claim for damage preferred by the sailing vessel against the steamer in respect of such collision, on the ground that had the steamer kept on her course the collision would have been avoided, dismissed with costs; the Court holding the established rule and principle of navigation, that vessels having the wind free and meeting each other in opposite directions rendering a collision probable should port their respective helms, applicable to the case, and that the sailing vessel was therefore to blame in not having ported her helm. *Ibid.*

36. Where two sailing vessels are approaching each other on opposite tacks, and there is the least danger of collision, the best and most proper course is for both vessels, when close on a wind, to port

their helms in obedience to the Trinity House rule. *The Seringapatam*, 5 Notes of Cases, 61.

\* 37. In an action by the proprietors of one steam-boat against the proprietors of another steam-boat for damage sustained by a collision in a river, *Held*, that the owners of the defendant's steam-boat were not liable in damages, no particular recklessness or mismanagement being imputable to the persons in charge of her, and that the persons in charge of the plaintiff's steam-boat might have slowed or stopped their engines, and lain to the shore, and so avoided the collision, on observing the embarrassed position of the defendant's steam-boat and other vessels in the river. *Finlay v. Thomson* (1842), 4 D. 776. (Scotch Rep.)

in such tide, and the master or other person in charge of such vessel neglecting to observe such regulations shall for each default be liable to a penalty of not exceeding 50*l*.

85. By s. 12.\* the master or other person having charge of any steam-vessel in any river or narrow channel in Great Britain or Ireland, or the adjacent islands, or on the sea within twenty miles of the coast, shall, whether under weigh or at anchor, between sunset and sunrise, exhibit such lights, within such places, in such manner, and under such circumstances, as by the regulations therein authorized to be made by the Lords Commissioners of the Admiralty shall be required under a penalty of not exceeding 20*l*. for each night's default. And the owner of any steam-vessel in which such light shall not be so exhibited shall not be entitled to recover any recompense or damage whatsoever which may be sustained by such vessel in consequence of any other vessel running foul thereof during the night.

86. By s. 13. if any damage to any person or property shall be sustained in consequence of the non-observance, as respects any steam-vessel, of the rules in this act contained relative to steam-vessels passing each other and exhibiting lights at night, the same shall in all Courts of Justice be deemed, in the absence of proof to the

contrary, to have been occasioned by the wilful default of the master or other person having the charge of such steam-vessel, and such master or other person shall be subject in all proceedings, whether civil or criminal, to the legal consequences of such wilful default.

87. The 9 & 10 Vict. c. 100. is declared in s. 36. not to extend to any of her Majesty's ships-of-war, nor to any vessel not a British registered vessel.

### 3. *Of the Trinity House regulations thereon, and the construction thereof.*†

88. No vessel, especially a steamer, should unnecessarily incur the probability of a collision by a pertinacious adherence to the strict rule of navigation, which, however, is not to be lightly infringed upon. *The Hope, Hepburn*, 1 W. Rob. 157.

89. The rules of navigation laid down by the Trinity House are rules of almost universal application, though there may exist so peculiar a combination of circumstances as to render the adoption of them no longer fitting or expedient: such circumstances, however, must be of a strong and stringent nature. *The Gazelle, Hurst*, Ibid. 471.

90. The rules of the Trinity House for navigation of steam-vessels meeting each other *held* to apply to a steam-vessel when

\* 38. By 9 & 10 Vict. c. 100. s. 10. the Lords Commissioners of the Admiralty may make regulations requiring the exhibition of lights by steam-vessels (except in the Thames above Yantleet Creek), which regulations are, by s. 11., to be published in the *Gazette*.

These regulations will be found in the Appendix, if issued before this Digest has passed through the press.

#### † 39. NAVIGATION OF STEAM-VESSELS.

Trinity House, London, 30th October, 1840. The attention of this Corporation having been directed to the numerous, severe, and in some instances fatal, accidents, which have resulted from the collision of vessels navigated by steam, and it appearing to be indispensably necessary, in order to guard against the recurrence of similar calamities, that a regulation should be established for the guidance and government of persons entrusted with the charge of such vessels; and,

Whereas the recognised rule for sailing vessels is, that those having the wind fair, shall give way to those on a wind:—

That when both are going by the wind the vessel on the starboard tack shall keep her wind, and the one on the larboard tack bear up, thereby passing each other on the larboard hand:—

That when both vessels have the wind large or abeam, and meet, they shall pass each other in the

same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port:—

And as steam-vessels may be considered in the light of vessels navigating with a fair wind, and should give way to sailing vessels on a wind on either tack, it becomes only necessary to provide a rule for their observance when meeting other steamers or sailing vessels going large.

Under these considerations, and with the object before stated, this Board has deemed it right to frame and promulgate the following rule, which, on communication with the Lords Commissioners of the Admiralty, the Elder Brethren find has been already adopted in respect of steam-vessels in her Majesty's service, and they desire earnestly to impress upon the minds of all persons having charge of steam-vessels, the propriety and urgent necessity of a strict adherence thereto, viz.

**RULE.** When steam-vessels on different courses must unavoidably or necessarily cross so near that by continuing their respective courses there would be a risk of coming in collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other.

A steam-vessel passing another in a narrow channel must always leave the vessel she is passing on the larboard hand.

By order,

J. HERBERT, Secretary.

meeting a sailing vessel. *The Friends, Oltman*, Ibid. 485.

91. The expression "giving way" in the Trinity House regulations means not crossing a vessel's bows but going under her stern. *The Rose, Gilmore*, 2 W. Rob. 1.

92. The rule of the Trinity House, "when steam-vessels on different courses must unavoidably and necessarily cross so near, that, by continuing their respective courses, there would be a risk of coming into collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other," is intended to apply whenever two steam-vessels are approaching each other in contrary directions, and there is a reasonable probability that by standing on a collision may ensue, and not merely where such a collision is altogether inevitable. The rule, though it does not constitute a law *per se*, will be considered by the Court of binding authority upon the owners of steam-vessels. *The Duke of Sussex, Forss*, 1 W. Rob. 275.

93. The rule of porting the helm laid down by the Trinity House is to be observed invariably in cases of steam ships or other vessels meeting each other on adverse courses where there is a probable chance of collision; and the Court will not enter into the discussion as to the precise point whether on the starboard side or otherwise in which one vessel lies to the other at the time of being discovered. *The Rose, Gilmore*, 2 W. Rob. 1.; *The Columbine, Norwood*, Ibid. 33.

94. A steam-vessel, having three lights and proceeding at the rate of ten knots an hour, came into collision with a sailing vessel, having no light and proceeding at the rate of four knots an hour. On discovering each other, the sailing vessel ported her helm, but the steamer starboarded hers. The steamer was condemned in the damage and costs, notwithstanding an averment on her behalf, that the sailing vessel, when first discovered, was one point on her starboard side. *The Rose, Gilmore*, Ibid. 1.

95. A steamer condemned in damages and costs arising from a collision with a vessel close-hauled, the steamer having, on the vessels nearing each other, infringed the Trinity House regulations by starboarding instead of porting her helm, without an adequate necessity. *The Columbine, Norwood*, Ibid. 27.

96. In the Trinity House regulations, viz., "Steam-vessels may be considered in

"the light of vessels with a fair wind, and "should give way to sailing vessels on a "wind on either tack," the expression "giving way" does not mean putting the helm to port under all circumstances, but giving way by porting or starboarding the helm as the exigency may require; and, therefore, where a merchant vessel close-hauled on the starboard tack met a steamer, which, on nearing her, ported her helm, and a collision ensued, the Trinity Masters held the collision to have been occasioned by the steamer not taking the proper measures to avoid the collision, and the Court accordingly condemned the steamer in the damage. *The Gazelle*, 10 Jur. 1066.

97. A steam-vessel discovering a sailing vessel approaching her, which, from the direction and state of the wind, she is aware must be sailing close-hauled, but from the darkness of the night is unable to make out upon which tack, should, in order to comply with the general rule, which obliges her to give way to that vessel, at once stop her engines until she has ascertained the exact course of the other vessel, and should not on mere surmise put her helm one way or the other. Defence set up on behalf of the steamer, that her helm was, in such a state of circumstances, put to port in compliance with the Trinity House regulations, not sustained. *The James Watt, Cullen*, 2 W. Rob. 270., 8 Jur. 320., 3 Notes of Cases, 86.

98. The rule of the Trinity House "when steam-vessels on different courses must unavoidably cross so near, that, by continuing their courses, there would be a risk of collision, each vessel shall put her helm to port," is only applicable where the vessels by continuing their respective courses are likely to come into collision, and where by putting the helm to port the collision may probably be avoided; but the rule is not applicable when either vessel, by unskilful management, is so near the shore that, by porting her helm, there would be danger of collision; in such case, the vessel on her right course is justified, in spite of the rule, in putting her helm to starboard. *The General Steam Navigation Company v. Tonkin (The Friends)*, 4 Moore, 314.

See *anté*, Note 35., No. 80.

(a) *As affecting customs of the river at variance therewith.*

99. A steam-vessel infringing the Trinity

House regulations and thereby occasioning a collision, condemned in the damage. A custom set up (at variance with those rules) of steering in a particular course in that portion of the river in which the collision occurred, *Held*, admitting the custom to exist, to be superseded by the rules. *The Duke of Sussex, Forss*, 1 W. Rob. 275.

100. In a cause of damage in respect of a collision occurring in the Thames, a custom of the river for steam-vessels coming up that part of it against wind and tide to keep close to the south shore in consequence of the depth of water for the purpose of leaving the river two-thirds open for vessels coming down, set up in defence as an exception to the rules of the Trinity House, *Held* to be superseded by such rules, and damage pronounced for accordingly with costs. *The Gazelle, Hurst*, *Ibid.* 471.

101. A custom set up in exception to the Trinity House regulations of taking such advantage of the tide as the localities of rivers afford, and therefore for vessels going with the tide down the Thames to keep in mid-channel to get the benefit thereof, and for vessels coming up the river against tide to keep as near as may be to one or other shore, and in half-way reach, particularly in an ebb tide, to keep on the south or Kentish side, *Held* to be superseded by those regulations. A steamer, the complaining party, having adopted a course in accordance with such a custom but at variance with the regulations, suit dismissed with costs. *The Friends, Ollman*, *Ibid.* 478. Decision affirmed on appeal, with costs. *The General Steam Navigation Company v. Tonkin (The Friends)*, 4 Moore, 314.

#### 4. With reference to the rate of speed.

102. A steamer which, going in a fog with unabated speed (twelve miles an hour) in a track frequented by coasters, came into collision with a coasting brig, condemned in the damage and costs, she being *held* blameable (though having ported her helm immediately on discerning the brig), in not having, in such a situation, reduced her speed one half; and on discerning the brig, not having stopped her engines at once. *The Perth, Spink*, 3 Hagg. 414.

103. Steam-vessels are not justified in going at the rate of ten knots an hour in a dark and hazy night. If a steam-vessel, going at that rate, come into collision with another vessel, without either party seeing

each other, the steamer will be held responsible for the damage. *The Rose, Gilmore*, 2 W. Rob. 2.

104. A large steamer, on her voyage from Kingston to Liverpool, came into collision at night with an outward-bound brig, which, in consequence of the collision, sank immediately, with some of her crew. The night was dark. The place of collision was a part of the Channel constantly navigated by vessels. The steamer was going at full speed; she carried lights, and had one man on her look-out station. The brig carried no lights properly so termed. *Held*, that the brig was not bound to carry lights, and that the steamer, in going at full speed on such a night in such a locality, and with one man only on the look-out, was improperly navigated, and liable to the whole damage. *The Iron Duke*, 9 Jur. 476., 4 Notes of Cases, 94.

#### 5. When on the starboard tack.

105. In a cause of collision against a steam-vessel, the Court, assisted by Trinity Masters, pronounced for damages and costs, holding that the steam-vessel, though on the starboard tack, being more under command, and manifestly having seen the other vessel, was to blame in not having given way. *The Shannon, Pennefather*, 2 Hagg. 173.

### VIII. MISCELLANEOUS CASES OF —

106. Damage sustained by a neutral vessel (captured, but afterwards restored,) during quarantine, owing to the unsuitable nature of the place assigned for quarantine, recommended to be repaired by Government. *The Freya, Jordt*, 5 C. Rob. 75.

107. In the case of a vessel running down a fishing cable from sheer want of skill, and attempting to execute a bold manœuvre that was improper under the circumstances, the whole loss decreed to be paid, with costs. *The Thames, Drummond*, *Ibid.* 345.

108. Damage occasioned by a vessel being improperly brought to anchor pronounced for. *The Neptune the Second*, 1 Dodson, 467.

109. If a vessel choose to avail herself of a particular mode of going down the river at a particular time, which renders it difficult to escape a collision, she must bear the consequences of a contingency to which she has exposed herself. Plea in a cause of damage, that the ship causing the collision was being warped down the river at



the time, and in consequence could not get out of the way, overruled. Damage pronounced for with costs. *The Hope, Hart*, 2 W. Rob. 8.

110. In the case of a collision between a vessel entering dock and another vessel in the dock basin, *Held* that the collision arose from the fault of the vessel entering the dock, in not dropping her anchor in sufficient time. *The Agricola, Grayson*, *Ibid.* 10.

111. A steam-vessel proceeding down the Tyne stopped to take in her sea pilot just above a building-yard where a launch, having flags flying as a notice thereof, was shortly to take place. On receiving her pilot, who was aware of the launch being about to take place, she proceeded onwards, and when nearly abreast of the yard discovered the launch moving off the stays, immediately on seeing which she backed her engines, notwithstanding which, however, the launch came with her stern against the fore part of the steamer, doing her considerable damage. An action in respect thereof having been brought by the steamer against the launch, *Held* that, under the circumstances, the steamer had received sufficient notice of the launch, as being a steamer she could effect any alteration of her course with greater facility than a sailing vessel; that those on board the launch, seeing her stop just above the yard, were justified in concluding that she was waiting for the launch, and that the steamer was to blame in not taking the precaution of bearing away from the yard, by proceeding to the northward, in order to avoid the risk of collision, which she could easily have done. Action dismissed accordingly, with costs. *The Blenheim*, 10 Jur. 79., 4 Notes of Cases, 393.

112. In an action for damages by the defendant's vessel, whilst in a disabled state, coming in collision with the plaintiff's, *Held*, that the defendant's vessel having become so through the negligence of the crew, the defendant was liable for the injury. *Secombe v. Wood*, 2 Mood. & Rob. 290.

*See antè, Nos. 30. 32.*

#### IX. OF THE ONUS PROBANDI IN CAUSES OF —

113. In a cause of damage, the party seeking compensation must sustain the

burthen of proof of the vessel proceeded against having been to blame, which alone founds a claim for compensation. The law requires that there should be preponderating evidence to fix the loss on the party charged. In a case of damage, the complainant having failed in such proof, the vessel proceeded against dismissed with costs. *The Ligo, Ligo*, 2 Hagg. 356.

114. It is true to a certain extent, that the burthen of proof in cases of collision rests on those who prefer the claim to be indemnified for the damage; but it is also at the same time equally true, that the owners of the vessel proceeded against must, in order to establish their exemption, prove the facts on which they rely for their defence. *The Columbine, Norwood*, 2 W. Rob. 30.

115. In cases of collision, where the evidence on both sides is conflicting and nicely balanced, the Court will be guided by the probabilities of the respective cases which are set up: *a priori*, the presumption is, that the master of a vessel would do what was right, and follow the regular and correct course of navigation. *The Mary, Stewart*, *Ibid.* 244.

116. The *onus* of proof that a collision arose from inevitable accident lies on the party asserting it. *The George*, 9 Jur. 282., 4 Notes of Cases, 161.

117. Where a vessel at anchor is run down by another, the *onus* lies on the latter to prove that the collision arose from some cause which would exempt her from liability. *Ibid.*, 9 Jur. 670., 4 Notes of Cases, 161.; *The Batavier*, 10 Jur. 19., 4 Notes of Cases, 356.

*See antè, No. 58.*

#### X. OF THE EFFECT OF A VERDICT IN AN ACTION AT LAW ON A SUIT IN THE COURT OF ADMIRALTY WITH RESPECT TO THE SAME COLLISION.

118. In a cause of damage occasioned by a collision, in respect of which a verdict had been obtained in an action at law brought by the owner of the vessel proceeded against, the verdict *Held*, under the circumstances, to be entitled to no weight in the action in the Court of Admiralty. *The Ann and Mary*, 2 W. Rob. 189., 7 Jur. 1000.

\* 40. In cases of damage the *onus* lies on those who bring a complaint against a vessel, and seek to be indemnified to prove that blame attaches on the vessel proceeded against. The *onus* of proving

inevitable accident does not necessarily attach to that vessel until a *prima facie* case of negligence and want of due seamanship is shown. *The Bolina*, 3 Notes of Cases, 210.

119. In a cause of damage, sentence was given in the Court of Admiralty (assisted by Trinity Masters), pronouncing for the damage and costs, which was directly at variance with a verdict at Common Law obtained by the owners of the ship proceeded against in the Admiralty against the owners of the ship proceeding there. *Ibid.*; *The General Steam Navigation Company v. Tonkin (The Friends)*, 4 Moore, 321.

## XII. OF THE RESPONSIBILITY FOR —

### 1. Of masters, pilots, and others.

120. Owners of vessels damaged have their choice of three modes of proceeding in the Court of Admiralty, viz. against the owners or master personally, or against the ship itself. *The Volant, Merchant*, 1 W. Rob. 387.

121. A pilot who has the steering of a ship is liable to an action for an injury done by his personal misconduct, although a superior officer is on board. *Stort v. Clements*, Peake, 107. (Kenyon.)

### 2. Where occasioned by vessels of the Crown.

122. In case of tort or damage committed by vessels of the Crown, the legal responsibility attaches to the actual wrongdoer, and the injured party must seek his redress, not against the parties who may be indirectly involved in the transaction, but from the person who actually commits the injury. *The Athol, Bellamy*, 1 W. Rob. 381.

123. Application for monition against the Lords Commissioners of the Admiralty to answer in a suit for damage by reason of a collision occasioned to a British vessel in the English Channel by a Government troop ship, and which application was opposed on behalf of the Crown, refused. Upon the suggestion of the Court, however, an appearance was subsequently voluntarily given on behalf of the Crown, and the question of damage adjudicated upon. *Ibid.*

124. If a ship be chartered to the Commissioners of the Navy as an armed vessel, and an injury be done to another vessel by the misconduct of the persons on board the former, while a commander of the Navy and

a King's pilot are on board, an action for the injury may be sustained against the owners of the chartered ship. *Fletcher v. Braddick*, 2 N. R. 182.

125. The captain of a sloop of war is not answerable for damage done by her running down another vessel, the mischief appearing to have been done during the watch of the lieutenant, who was upon deck, and had the actual direction and management of the steering and navigating of the sloop at the time, and when the captain was not upon deck, nor was called by his duty to be there. *Nicholson v. Mouncey*, 15 East, 384.; and see *Huggett v. Montgomery*, 2 N. R. 446.; *Rose v. Miles*, 4 M. & S. 101., and Smith's Merc. Law, 129. n.

## XIII. PLEADINGS IN CAUSES OF —

126. In a cause of damage, in which the proceedings were by plea and proof, objections to certain parts of a responsive allegation, viz. 1st. the history in general terms of the ship proceeded against for some days prior to the collision; 2nd, statements made by the mate and seamen of the ship proceeding with respect to the state of their vessel, &c.; 3rd, the age of such ship; 4th, variations between the accounts given in the protest and libel; and, 5th, delay in instituting proceedings. *Held*, 1st, that such previous history of the ship was admissible, as being usual and convenient; 2nd, that such only of the statements as formed part of the *res gesta* were admissible; 3rd, that the age of the ship might be pleaded to account for the loss; 4th, that inasmuch as the protest itself was to be brought in the statements contained in it need not be pleaded; and, 5th, that the delay appearing on the face of the proceedings, and not being accounted for in the libel, it was not necessary to allege it in the responsive allegation. *The Mellona*, 10 Jur. 993.

*See post*, No. 132.

## XIV. PRACTICE IN CAUSES OF — \*

127. It is always to be lamented when suits for damage or actions of any other description are not brought until a considerable length of time after the occurrence

\* 41. With regard to actions for damage at Common Law, the several part-owners of a ship make in law but one owner, and in case of any injury to their ship, they ought regularly to join in one action for the recovery of damages; but this rule is made for the benefit of the wrong-doer, who must avail himself of it at the very beginning of

the cause, by plea in abatement. In case of the death of any part-owner after such injury received, the right of action survives to the surviving part-owners, who must afterwards pay to the representatives of the deceased part-owner the value of his share. *Abb. Sh.* 114., and cases there cited.

of the accident, as the memory of the witnesses cannot be so accurate as when deposing to a recent occurrence. If, therefore, the evidence is not so ample or precise as it ought to be, the complainant must take all the consequences arising from his own delay; but if the evidence is satisfactory, and the action is brought within a period allowed by law, the party will be entitled to recover, though there may have been great delay in bringing forward the case. *The John Brotherick*, 8 Jur. 276.

128. In a cause of collision, claim of exemption from responsibility for damage, on the ground of a licensed pilot being on board, is matter of defence, and not of protest. *The Eliza Jane, Findlay*, 3 Hagg. 337.

129. In a cause of damage in respect of a collision occasioned by a foreign vessel, protest of the foreign vessel against such proceedings, on the ground of a licensed pilot being on board, overruled, such grounds of exemption being held to be matter of defence, and not of protest, the jurisdiction of the Court not being denied. *The Girolamo, Guiranoich*, Ibid. 173.; *The Gladiator, Britten*, Ibid. 340.

130. In collision suits the most regular course of proceeding is by plea and proof, which enables the defendant to examine the witnesses. *The Gladiator, Britten*, Ibid. 343.

131. In a collision case, application was made by the proctor of the party proceeding to be allowed to increase the amount of the action to cover consequential damages. The damage, however, was pronounced against, which disposed of the application. *The Celt, Taylor*, 3 Hagg. 328. n. (6th Feb. 1837.)

132. A party cannot, at the hearing, avail himself of a rule of seamanship in order to impute misconduct to the other party in not acting up to the rule, unless such misconduct be charged in the pleadings. *The Ebenezer, Varwell*, 2 W. Rob. 210., 7 Jur. 1117.

133. The Court is extremely unwilling to disturb the reports of the registrar and merchants, made in cases of damage, on the amount of loss incurred, and of the

compensation due; because, from their experience in such matters, they are fully competent to arrive at a just and proper conclusion, and most able to judge of the value of the property lost. *The Matchless*, 10 Jur. 1017.

134. A Danish and a British ship came into collision, in consequence of which the Danish ship was entirely lost, and the British ship received some damage. An action having been entered on behalf of the owners of the Danish ship, and bail given, a cross action was entered on behalf of the owners of the British ship, and bail demanded, but refused. On motion on behalf of the owners of the British ship that proceedings in the action against them should be stayed until the bail required by them should be given, the Court rejected the motion, and held that the property being entirely gone, and the owners foreigners resident abroad, there was no way of enforcing the giving the bail required, but that such parties must give bail for costs in their action. *The Seringapatam*, Ibid. 1065.

*See ante*, Nos. 23. 36.

#### XV. COSTS IN CAUSES OF —

135. The law as to costs in cases of collision is that if either party is to blame that party pays the costs of both, if neither are to blame each pays his own costs, if both are to blame the costs fall on both. *The Washington*, 5 Jur. 1067.

136. It is the practice of the Court not to give costs on either side where the collision is held to have occurred from inevitable accident. *The Itinerant, Russell*, 2 W. Rob. 244.

137. In a cause of collision the Court and Trinity Masters being of opinion that the damage was occasioned by accident, imputable chiefly to the misconduct of the crew of the vessel damaged, suit dismissed with costs, upon the principle that costs would have followed an award of damages, and should therefore accompany a dismissal. *The Catherine of Dover, Davison*, 2 Hagg. 154.

138. As a general rule costs in causes of

42. A cause of damage was heard, under the direction of the Judge, upon the evidence of the master and mate of the vessel proceeding, given on the libel and interrogatories on the one side, and on affidavits of the master and owner of the vessel proceeded against on the other. *The Earl Bathurst* (1838), 3 Monthly Law Mag. (Notes of Cases), 446.

43. In a case of collision, in which some remarks

had been made in argument on the non-production of the master's protest, the Court said it made no order that protests should in all such cases be brought in, but that they ought to be so, and where a protest was not brought in, the Court would have no difficulty in forming a conclusion as to the reason why it was kept back. *Note to the British Dominion* (1841), 10 Monthly Law Mag. (Notes of Cases), 225.

damage follow the decision: *The Ebenezer*, 7 Jur. 1118. But, *semble*, that the Court will withhold costs in cases of difficulty. Costs refused in a case in which the damage was pronounced for. *Ibid.* 2 W. Rob. 213.

139. In a cause of collision in which the owners of the ship proceeded against contested their responsibility, on the grounds both that the vessel damaged was in fault and that the accident arose through the default of a duly licensed pilot: the Court having pronounced against them on the first point and in their favour on the second, refused them their costs, but stated that, had they admitted the facts and put themselves entirely on the Pilot Act, it would have given them costs. *The Batavier*, 10 Jur. 20., 4 Notes of Cases, 356.\*

*See antè*, No. 61.

#### XVI. MISCELLANEA.†

140. A steam-vessel was carrying a common light on the starboard bow and a red light on the larboard. A question arose in a case of collision whether at a particular

time the steamer's head was to the south; the evidence on behalf of the opposing vessel stated that a light was seen, but not a red light. The Trinity Masters being of opinion that if the steamer's head was to the south, according to the relative positions of the two vessels, the red light would not be visible to the other vessel, the fact that such light was not seen *Held* to be decisive on the question of the position of the steamer's head. *The Shannon and Placidia*, 7 Jur. 380.

141. By 9 & 10 Vict. c. 99. s. 4., in case of vessels in distress wrecked, stranded, or run on shore, being wholly or in part plundered, damaged, or destroyed by a tumultuous assemblage, whether on shore or afloat, the hundred shall be liable for the damage, in England or Wales in the same manner as is provided in 7 & 8 Geo. 4. c. 31.; and in Ireland in the same manner as is provided in 3 & 4 W. 4. c. 37.

142. Damage confers no lien by the vessel damaged against the damaging vessel. *The Volant Merchant*, 1 W. Rob. 387.

### DAMAGE (PERSONAL).

#### I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AND MAGISTRATES AS TO —

#### II. OF THE RIGHT TO INFLICT PUNISHMENT, AND THE RESPONSIBILITIES ATTENDING THE SAME.

1. *Of the master.*
2. *Of his officers.*

#### III. OF THE DUTIES OF THE MASTER BEFORE INFLICTING PUNISHMENT.

#### IV. OF THE MASTER'S JUSTIFICATION IN SUITS FOR —

1. *Generally.*
2. *Where held sufficient — et contra.*

#### V. CLAIMS FOR — WHERE NOT PROVED.

#### I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AND MAGISTRATES AS TO —†

1. An objection to the jurisdiction of the Court of Admiralty to entertain a suit for personal damage, brought by a passenger against the master of a vessel, overruled. *The Ruckers, Carey*, 4 C. Rob. 73.

By 7 & 8 Vict. c. 112. s. 44., in case of any assault or battery committed on board any ship belonging to any British subject in any part of the world, two Justices of the Peace in any part of Her Majesty's

dominions, or of the territories of the East India Company residing near the port, may, on complaint of the party aggrieved, adjudicate upon any such complaint, in like manner as is provided by the 9 Geo. 4. c. 31., in cases of assaults in England, and the fine imposed therein shall be payable to the Seamen's Hospital Society, but such complaint is to be made and prosecuted within three months after the assault, or after the arrival of the ship at her port of destination in the United Kingdom, or after the parties shall be within the jurisdiction of such justices.

\* Note. The judgment as to costs has been added to the several cases, which see thereon.

† 44. A steamer towing a sailing vessel in charge of a duly licensed pilot is not relieved from the responsibility of watching the course pursued by the pilot on board the vessel towed. Such latter vessel having stranded during the towing, owing to the want of skill of the pilot, which accident might have been prevented by ordinary care and skill on the part of the steamer: *Held*, that

the steamer had forfeited thereby her claim to salvage for antecedent services rendered to the vessel in tow. *The Duke of Manchester*, 4 Notes of Cases, 582.

‡ 1. In cases of assault and battery during a voyage or on the high seas, if an order to hold to bail should be refused by a Judge at Common Law, it may be preferable, when the party guilty of the battery is the owner or master of the vessel on board which the battery was committed, to pro-

## II. OF THE RIGHT TO INFLICT PUNISHMENT, AND THE RESPONSIBILITY ATTENDING THE SAME.\*

### 1. Of the master.

#### 2. A master of a merchant ship has a

right well established to inflict corporal punishment on a delinquent mariner in a case of gross misconduct. That right must be supported by the law of England, which is the proper authority for fixing the limits within which one subject of this realm

ceeded in the Court of Admiralty, where it is of course to issue a warrant to arrest the master, who may be compelled to find bail, and thereupon the plaintiff may libel the defendant in that Court, and the Judge, after examining the evidence, may himself award damages, or, if he think fit, convene a jury to assist him, and the successful party is entitled to costs. A suit in this Court, when the witnesses are staying in this country only a short time, is preferable to an action at Common Law. 2 *Chitty's Gen. Prac.* 513.

2. A suit may be instituted in the Admiralty, not only by a sailor or other officer or person employed on board a ship during a voyage, against the captain or master or other person on board the same ship, or against a person on board another ship for an assault and battery, but even by a passenger against the master, when the injury was committed during a voyage or on the high seas. *Ibid.* 512.

\* 3. The master may inflict moderate correction on a seaman for sufficient cause, but he must take care that it is not disproportionate to the offence. If he exceed the bounds of moderation he is treated as a trespasser, and is liable in damages. In respect to the mode of correction, it may be by personal chastisement, or by confinement on board ship, in irons or otherwise. There must not, however, be any cruelty or unnecessary severity. The mode, instruments, or extent of the punishment are not laid down by law, but must depend upon circumstances. In cases of urgent necessity, as of mutiny, weapons may be used which would be unlawful at other times; but even in these cases they must be used with the caution which the law requires in other cases of self-defence and vindication of rightful authority. *Dana's Seaman's Manual*, 194.

4. It is not necessary that the punishment should be inflicted to suppress the offence at the time of its commission. It may be inflicted for past offences, and to promote good discipline on board, but the reference to by-gone acts should be very clear and distinct, or they will be presumed to have been forgiven. In many cases prudence may require a postponement of the proper punishment. *Ibid.*

5. The authority of the master, being in its nature parental, must be exercised with a due regard to the rights and interests of all parties. He has a large discretion, but is held to answer strictly for every abuse of it. The law enjoins upon him a temperate demeanour and decent conduct towards seamen. He risks the consequence if he commence a dispute with illegal conduct and improper behaviour. In all his acts of correction he must punish purely for reformation and discipline, and never to gratify personal feelings. If a master generally permit or encourage disorderly behaviour in his ship, he is less excusable for inflicting unusual punishment on account of misconduct arising out of that disorder. If the case admit of delay, and the master does not make proper inquiry before punishing, he takes the consequences upon himself. *Ibid.*

6. This power over the liberty and person of a fellow-man, being against common right, and intrusted to the master only from public policy regarding the necessities of the service, is to be sparingly used, and a strict account will be required of its exercise. *Ibid.*

7. The master is responsible for any punishment inflicted on board the vessel, unless in his absence, or when he is prevented by force from interfering; neither will absence always be an excuse. If he had reason to suppose that such a thing might be done, and did not take pains to be present and interfere, he will be liable. If the master be present while the mate or any subordinate officer inflicts punishment upon any of the crew, or if it be inflicted under such circumstances as would raise a presumption that the master was aware of it, and he does not interfere, he will be held to have adopted it as his own act, and will be answerable accordingly. *Ibid.* 194, 195.

8. The advice, or even the personal superintendence or orders of a consul, or any foreign authority, will not relieve the master of his personal responsibility. He may ask advice, but he must act upon his own account, and is equally answerable for what he does himself, and what he permits to be done on board his vessel by others. *Ibid.* 195. And generally the advice of a consul is no justification for an illegal act. *Ibid.* 193.

9. In case of an open mutiny, or of imminent danger to life and property, the master may make use of the local authorities, but then he is to remember that he can use them no further than for the purpose of quelling the mutiny or of apprehending the felon. As soon as his authority is restored, the parental character is again thrown upon him, and all acts of punishment must be upon his own responsibility. *Ibid.* 195.

10. The master has no right to punish criminally. He has no judicial power. If a seaman has committed an offence further than against the internal order and economy of the ship, and which moderate correction is not sufficient to meet, the master must bring him home (in confinement, if necessary), or send him immediately by some other vessel to be tried by the laws and by a jury of his country. *Ibid.*

11. The master has the right to imprison a seaman in a foreign port, in a case of urgent necessity, but the power has always been very closely watched in courts of law, and held to be justified only by a strong case of necessity. If he do so punish him, he is not permitted to deduct his wages during the time of imprisonment, nor to charge him with the expense of it. *Ibid.* 193.

12. A passenger must submit to the reasonable rules and usages of the ship: he has no right to interfere with its discipline and internal regulations: indeed, in a case of necessity and for the order and safety of the ship, the master may restrain a passenger by force, but the cause must be urgent, and the manner reasonable and moderate. *Ibid.* 197.

has a right to inflict corporal suffering on another. *The Agincourt, Mahon*, 1 Hagg. 272.

3. The law clearly recognises the authority of inflicting bodily correction upon offending mariners, such punishment being commensurate with the offence committed, being awarded by due authority, and administered with due moderation. *The Lowther Castle, Baker*, *Ibid.* 385.

4. Ill usage is a very undefined term, depending much upon the opinion of the person who uses it, and taking its character out of the provocation given and the relation in which the parties stand to each other. *The Lima, Fewson*, 3 Hagg. 353.

5. Holding up fists to strike a captain is so near an act of mutiny that the master may quell it by striking the first blow. *Ibid.*

### 2. Of his officers.\*

## III. OF THE DUTIES OF THE MASTER BEFORE INFLECTING PUNISHMENT.

6. In all cases which will admit of the delay proper for inquiry, due inquiry should precede the act of punishment, and the party charged be heard in his own defence, though there are cases which will not admit of such delay. *The Agincourt, Mahon*, 1 Hagg. 274.

7. It may be matter of prudence, but is not matter of strict obligation, in East India ships engaged in private trade (though asserted to be so in ships belonging to the East India Company) that the captain should communicate with other officers of the vessel prior to the infliction of punishment, nor is any particular mode or instrument of punishment particularly recognised. It must be left to the common usage in such cases and to the humane discretion of the party in command. *Ibid.*

8. In cases of correction of seamen it is always desirable, and indeed the duty of the master, to institute an inquiry and

have the result of it entered on the log. *Murray v. Moutrie*, 6 C. & P. 471., Abb. Sh. 180.

## IV. OF THE MASTER'S JUSTIFICATION IN SUITS FOR —

### 1. Generally.

9. The defence to a charge of cruelty may be a total disapproval of cruelty having been practised, or a justification by proofs of misconduct provoking it, and that misconduct may be confined to an offence immediately preceding, or may likewise include similar antecedent offences. *The Agincourt, Mahon*, 1 Hagg. 274.

10. A recent act of misconduct, though of a lighter kind, might properly be punished with a severer correction than due to it if standing alone, if antecedent acts of the same kind had proved the existence of habits of such misconduct, but such antecedent acts should be allied in nature to the subsequent one and not of a different character. *Ibid.* 280.

11. A justification set up as a defence to a charge of cruelty, referring to by-gone acts, is the last which the Court would be inclined to favour. *Ibid.* 275.

12. In a claim of personal damage by a seaman, the defence pleading the misconduct in respect of which the punishment complained of was inflicted, may be extended to proof of anterior misconduct *ejusdem generis*. *The Lowther Castle, Baker*, *Ibid.* 387.

### 2. Where held sufficient — *et contra*.

13. On a charge of ill-treatment and undue correction, a justification partly on the ground of an offence recently committed, and partly on account of antecedent offences, *Held* not sustained; complaint pronounced for, and 100*l.* allowed, with costs. *The Agincourt, Mahon*, 1 Hagg. 271.

14. An intention to commit a desertion

\* 13. The law as to the officer's right to punish a seaman has been clearly settled, and is very simple. The sole authority to punish for correction and discipline resides with the master. An officer has no right to use force with a seaman, either by chastising or confining him, except in a single class of cases, that is, upon an emergency which admits of no delay, and where the use of force is necessary for the safety of life and property. If delay be practicable, the officer must report to the master and leave the duty of correction with him. Except in these cases the officer is liable as

a trespasser for any force used with the seamen. If the officer act under the authority, express or implied, of the master, he will not be held liable, even though the punishment should be excessive and unjustifiable, for he is in such cases only the agent of the master, who is responsible for the act. Yet if the punishment be so excessive as to show malice in the officer, or there be any thing in his conduct to imply the same, he will be liable in some measure himself. *Dana's Seaman's Manual*, 199, 200. See *antè*, *Notè* 7.

set up as defence to cruelty, the mariner, the ship's cook, having gone on shore (it being a question whether he was authorized to do so), and having in consequence of a disorderly frolic been locked up in prison as a disorderly person, but released on application of the captain, *Held* not proved, and such acts not to amount to a desertion. *Ibid.*, 281.

15. In an action against the captain of an East India Company's ship for personal damage, on the ground of excessive punishment, *viz.* thirty-six lashes after four or five days' imprisonment in irons, defence set up of negligence of duty and disrespectful conduct on the part of the mariner, accompanied with averments of habitual laziness, negligence, and disrespectful behaviour, *Held* to be sufficiently proved, and a justification for the punish-

ment. Suit dismissed accordingly. *The Lowther Castle, Baker, Ibid.* 384.

16. In an action for damages brought by a mariner against the master on account of a violent assault, by which his ribs had been broken and he had been otherwise grievously injured, there being no substantial defence, 120*l.* and costs decreed. An account in full of all demands taken by the master on paying his wages, *Held* not to bar the mariner's claim for damage. *The Enchantress, Killoch, Ibid.* 395.

#### V. CLAIMS FOR—WHERE NOT PROVED.

17. Charge of ill-treatment brought by the mate against the master, *Held* not sustained, and the witnesses in support thereof to have perjured themselves. Complaint dismissed with costs. *The Centurion, Wills, Ibid.* 161.

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### DEMURRAGE.

1. Demurrage given against captors for unjustifiable detention and delay in proceeding to adjudication. Demurrage assessed by registrar and merchants on 180 tons, for three months and twenty days, at 330*l.* *The Corier Maritimo, Mastakinich, 1 C. Rob.* 287.

2. In a case of restitution by consent, demurrage applied for and decreed by the Court from the time of the ship's papers being brought in to the period of restitution, no satisfactory explanation of the delay (two months and twenty days) being given by the captors. *The Zee Star, Muller, 4 C. Rob.* 71.

3. Demurrage damage and compensation pronounced due on restitution of an Ottoman vessel, on the ground of great and unnecessary delay in the proceedings of the seizer, occasioning considerable damage to the ship and cargo. *The Madonna del Burao, Autonopoli, Ibid.* 169.

4. Captors having been guilty of delay in proceeding to adjudication, demurrage of two months allowed to the neutrals as

against the captors. *The St. Juan Baptista and La Purissima Concepcion, 5 C. Rob.* 33.

5. One month's demurrage and costs allowed against captor for sending his prize (ultimately restored) to an inconvenient port pending adjudication. *The Wilhelmsberg, Lubben, Ibid.* 143.

6. In the case of a detention of a Swedish ship with a cargo of iron and tar going to a port of the enemy, and brought in subject to a right of pre-emption (by the Swedish treaty substituted for the right of forfeiture) of cargo, which Government ultimately refused to purchase; some delay having arisen relative to such determination, three weeks' demurrage allowed, and directed to be paid by Government. *The Zacheman, Kraeplien, Ibid.* 152.

7. A party entitled to possession, wrongfully transferred, of a vessel, is entitled also to demurrage as compensation, and virtually part of the interest in dispute, not as vindictive damages. *The John, Horn, 2 Hagg.* 317.

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## DERELICTS.

## I. WHAT ARE — ET CONTRA.

## II. OF THE RIGHT TO —

## III. OF THE SALVAGE OF — see SALVAGE (civil).

## IV. AS TO THE PERCENTAGE TO GREENWICH HOSPITAL ON SALVAGE OF — BY H.M. SHIPS, AND AS TO THE UNCLAIMED AND FORFEITED SHARES THEREOF — see GREENWICH HOSPITAL.

## I. WHAT ARE — ET CONTRA.\*

1. It is not necessary to constitute derelict, that no owner should afterwards appear. It is sufficient if there has been an abandonment at sea by the master and crew, without hope of recovery. A mere quitting the ship for the purpose of procuring assistance from the shore, or with an intention of returning to her again, is not an abandonment. *The Aquila, Lunsden*, 1 C. Rob. 40.†

## II. OF THE RIGHT TO —

2. By the Marine Law the Lord High Admiral has the custody of derelicts found at sea. If no owner appear they become perquisites of Admiralty. The finder can have no property in them, only a reward for his trouble in preserving them. If no owner appear, or if the claimant cannot prove his property, the salvors have not acquired any right in the thing found, but

they must be remunerated for their expense and trouble from a sale of the ship and cargo. *The Aquila, Lunsden*, 1 C. Rob. 42.

3. It is the general rule of civilised countries, that what is found derelict on the seas is acquired beneficially for the sovereign or his grantees if no owner appear. In England this right is firmly established. *Ibid.*

4. Whatever property is found derelict must be restored, on payment of salvage, to the owner if he appear in due time; if not, it must, subject to the same demand, be condemned as a droit of Admiralty. *The King v. Property Derelict*, 1 Hagg. 384.

5. Derelicts are *prima facie* droits. They are so until a claim is allowed, though they do not become actual droits until a year has expired without such a claim, till when they are only derelicts. *The Thetis*, 3 Hagg. 235.

See DROITS OF ADMIRALTY, *cap. II. sect. 6.*

## DROITS OF ADMIRALTY.

## I. GENERAL CONSIDERATIONS AS TO — 144.

## II. WHAT ARE — ET CONTRA, 145.

1. *Captures from the land*, 145.

2. *Captures in ports, roads, &c.* 145.

3. *Captures by non-commissioned persons or vessels*, 147.

4. *Captures by privateers between the application for, and grant of, letters of marque*, 147.

5. *Captures by privateers duly commissioned but not having the master on board at the time of capture*, 148.

6. *Derelict property*, 148.

7. *Other cases*, 148.

## III. AS TO THE PERCENTAGE PAYABLE TO GREENWICH HOSPITAL ON — see GREENWICH HOSPITAL.

## IV. AS TO THE RATES OF SALVAGE OF — see SALVAGE (civil).

\* 1. Derelict signifies a boat or other vessel found abandoned at sea without any person in her. 2 *Brown's Civil Law*, 51., *Palmer on Wreck*, 3.

2. Goods cast overboard to lighten the ship are not to be deemed derelicts, so as to become the property of the first finder, unless utterly abandoned *sine spe recuperandi*. *Laws of Oleron*, cited in *Godolphin's Adm. Jur.*, ext. 32.

3. Slaves (and no other person) being on board a wrecked vessel, do not prevent it from being a derelict. *Flinn et al. v. The Leander*, Bee's (AMERICAN) Rep. 260.

4. If a vessel be once abandoned, *animo non revertendi*, a subsequent return by the crew under new circumstances does not alter the nature of the

original abandonment where the return is made in company of those who come as salvors. *The Boston and cargo*, 1 Sumner's (AMERICAN) Rep. 328.

† 5. When it was declared by Sir William Scott that a legal derelict is properly where there has been an abandonment at sea by the master and crew without hope of recovery (*The Aquila*, *supra*), it might perhaps have been more accurate, in the view of distinguishing a temporary absence from a permanent abandonment, to have said an abandonment without an intention of return, since the *spe recuperandi* might exist, even though the abandonment were without such intention. *Rowe et al. v. Brig*, 1 Mason's (AMERICAN) Rep. 272.



## I. GENERAL CONSIDERATIONS AS TO —

1. The King holds the office of Lord High Admiral in a capacity distinguishable from his regal character, and although he is the fountain of all prize, he has conveyed away his interest in it to various persons, to the commanders and crews of his own ships, to his other subjects by letters of marque, and to the Lord High Admiral of England. *The Mercurius, Gerdes*, 1 C. Rob. 81.

2. The rights of the Lord High Admiral are of great antiquity and splendour, and are entitled to great attention and respect. At the same time it is not to be understood that an extension of these rights beyond their absolute limits is to be favoured by construction; they are parts and parcels of the ancient rights of the Crown, communicated by former grants to that officer under a very different state and administration of his office from that which now exists in practice. *The Rebeckah, Thompson*, *Ibid.* 229.; *The Maria Françoise, Le Bouch*, 6 C. Rob. 297.

3. The grants from the Crown of these rights will be construed strictly against the grantee, as all grants of the Crown are. *The Rebeckah, Thompson*, 1 C. Rob. 229.; *The Gertruyda, De Vries*, 2 C. Rob. 219.

4. As long as the office of Lord High Admiral, though now residing in the person of his Majesty, continues in this kingdom, to have a legal existence, it is extremely proper that the droits and perquisites of the office should continue as anciently distinguished, and that they should be strictly determined, as if the proceeds were carried in the ancient and distinct course. *The Gertruyda, De Vries*, *Ibid.* 218.

5. *Seem* that the possessions of the East India Company have been so incorporated with the rights and interests of the kingdom, that the claims of the Lord High Admiral would extend there, and attach on seizures made there, as well as in other ports. *The Maria Françoise, Le Bouch*, 6 C. Rob. 282.

6. By 1 W. 4. c. 25. s. 2. and 1 Vict. c. 2. s. 2 droits of Admiralty are, with other hereditary revenues of the Crown, directed to be carried to the credit of the Consolidated Fund, that statute granting certain fixed revenues to the Crown in lieu thereof; but by s. 12. a power is reserved to the Crown of granting therefrom rewards to seizers or informers thereof.

See WRECK.

## II. WHAT ARE — ET CONTRA.

1. *Captures from the land.*

7. All title to sea prize must be derived from commissions under the Admiralty, which is the great fountain of maritime authority, and a military force on land is not invested with any commission so derived. A capture, therefore, at sea, made by such a force on land, enures to the benefit of the Lord High Admiral. *The Rebeckah, Thompson*, 1 C. Rob. 235.

8. *Seem*, that if naval persons holding a commission were to make a capture upon the sea by the use of a force stationed upon the land, as if a part of a crew of a man-of-war were landed and descried a ship of the enemy at sea and they took possession of any battery or fort upon the shore, and by means of such battery or fort compelled the ship to strike, such a capture, though made by persons having naval commissions, yet being made by means of a force upon the land which they employed accidentally and without any right under their commission, would be a droit of Admiralty and nothing more. *Ibid.* 233.

9. But if the place upon the land where the captors availed themselves of a position were not a fort or garrisoned station of any land force, but merely subservient to the use of the navy, and manned, supplied, and armed by ships-of-war, it would not be deemed to fall within such a principle. *Ibid.*

10. If a force upon the land make a capture at sea, as if a ship of the enemy be compelled to strike by a firing from a fort, that ship would be a droit of Admiralty, and the garrison must take a reward from the bounty of the Admiralty, and not a prize interest under the King's proclamation. *Ibid.*

11. A ship captured by naval commissioned forces from an island having no military establishment upon it, *held* to be prize to the actual captor and not a droit of Admiralty. *Ibid.* 227.

See WRECK.

2. *Captures in ports, roads, &c.*

12. By the Order in Council of 6th March, 1605, it is declared, that all ships and goods belonging to enemies coming into any port, creek, or road of England or Ireland by stress of weather or other accident, or by mistake of port, or by ignorance, not knowing of the war, shall belong to the Lord High Admiral; but

that all such ships, whether men-of-war or merchantmen, as shall voluntarily come in upon revolt from the enemy, or be driven or forced into port by the King's men-of-war, and also such ships as shall be seized in any of the ports, creeks, or roads of England or Ireland before any declaration of war or reprisals by his Majesty, shall belong to the Crown.\*

13. The grant to the Lord High Admiral by the Order in Council of 6th March, 1665-6, and by the subsisting practice, gives him the benefit of all captures by whomsoever made, whether commissioned or non-commissioned persons, "of all ships and goods coming into ports, creeks, or roads of England or Ireland, unless they come in voluntarily upon revolt or are driven in by the King's cruisers." Usage has construed this to include ships and goods already come into ports, creeks, or roads, and these not only of England and Ireland, but of all the dominions thereto belonging. *The Rebeckah*, Thompson, 1 C. Rob. 229.

14. This grant, however, does not extend to ships coming into foreign ports, and such coming in must be during the subsisting war to found the Lord High Admiral's right. *The Gertruyda*, De Vries, 2 C. Rob. 219.

15. When it was laid down in *The Trautmansdorff* (Lords, Aug. 1. 1795), that it was not necessary that the ship should be actually entered, and that it was enough if she was in *ipsis faucibus* of the port, creek, or road, it is evident that the words, "ports, creeks, or roads," have a signification intimating certain known receptacles of ships more or less protected by points or headlands, and marked out by limits, and resorted to as places of safety. *The Rebeckah*, Thompson, 1 C. Rob. 229.

16. But that is not a road or roadstead within the meaning of this grant wherever a ship can find anchorage ground. *Ibid.*

17. A roadstead is a known general station for ships, *statio tutissima nautis*, notoriously used as such and distinguished by the name, and not every spot where an anchor will find bottom and fix itself. The expression of "coming into a road" shows that by road is meant something much beyond mere anchorage ground on an open coast. *Ibid.*

18. To support the Lord High Admiral's

title to capture in roads, it must be shown that the road was at least so connected with the common uses of the port as to constitute a *part of the port* in which the capture is alleged to have been made. It must be a place where vessels not only arrive but take up their station for the purpose of unlivering their cargoes in the ordinary course of commerce. *The Maria Françoise*, Le Bouch, 6 C. Rob. 300.

19. Ships taken in a roadstead at the usual place of landing cargoes there during the dependence of hostilities, *Held*, so far as the locality of the seizure is concerned, to become droits of Admiralty. *The Foltina*, Julius, 1 Dodson, 450.

20. The Crown, in its office of Admiralty, is generally entitled to property taken in a roadstead, as droits of Admiralty, but not if taken in a conjoint expedition. *La Esperanza*, 1 Hagg. 86.

*As to the definition of, and what constitutes, a port—see SEA.*

21. The true rule respecting the rights of the Lord High Admiral is to be taken from the Order in Council of 1665. From the tenor of that order, the distinction between the Admiral and rights of the Crown is founded in this, that when vessels come in, not under any motive arising out of the occasions of war, but from distress of weather, or want of provisions, or from ignorance of war, and are seized in port, they belong to the Lord High Admiral; but where the hand of violence has been exercised upon them, where the impression arises from acts connected with war, from revolt of their own crew, or from being driven in by the King's ships, they belong to the Crown. This distinction has been invariably observed from the time of the Order. *The Maria Françoise*, Le Bouch, 6 C. Rob. 282.

22. An enemy's ship sailed prior to the declaration of hostilities, and was subsequently thereto captured and brought in, but afterwards released, and whilst lying where she had been brought in was again seized and brought to adjudication. Claim of the Lord High Admiral as for a droit of Admiralty seized in port subsequent to hostilities pronounced against, as not within the meaning of the grant to the Lord High

\* This Order in Council is printed in the Appendix.

Admiral under the Order in Council of 1665, on the ground that the prize had been forced in by warlike operations, and not driven in by circumstances unconnected with the war or in ignorance of the existence thereof. Condemnation to captors accordingly. *Ibid.*

### 3. Captures by non-commissioned persons or vessels.\*

23. By the Order in Council of 6th March, 1605-6, it is declared that all enemy's ships and goods, casually met at sea and seized by any vessel not commissioned, shall belong to the Lord High Admiral.

24. By the Admiralty law the property of a ship taken without letters of marque vests in the King upon the taking, and this upon the high sea. *The King v. Brown*, 12 Mod. 135., Carth. 399.

25. Where a privateer takes a prize without letters of marque, the prize belongs to the King as a droit of the Crown. *Nichols v. Goodall*, 10 Ves. 155.

26. A ship seized as prize, and towed into port by a midshipman, condemned as a droit of Admiralty. *The Brilliant*, cited in *The Dickenson*, Merton, Hay & Marriott, 22.

27. Rebel goods have always been condemned as droits of Admiralty when taken by non-commissioned persons. The act of Parliament declaring the rebellion of the American colonies, and enacting forfeiture to the King of the goods of such colonists, as if the same were the goods of open enemies, *Held* not to vary this rule, or to give a preferable title to such prize to the King *jure coronæ*, as for a forfeiture and not as a prize of war. *The Dickenson*, Merton, *Ibid.* 47.

28. An American ship, belonging to subjects of America, then colonists of this country, but in a state of revolt, was seized by the crew on her voyage, and brought into a port of this country, where she was also seized by a man-of-war, and proceeded against and condemned as prize under the statute which enacts that the ships and goods of the inhabitants of such rebellious colonies shall become forfeited to the King, as if the same were the goods of open enemies. The prize was then claimed by three parties: 1st, on behalf of the King

*jure coronæ*; 2d, for the King in his office of Admiralty, as a droit; and 3d, by the captor in port: *Held*, that the case was analogous to the capture of an enemy ship by non-commissioned captors, and the prize condemned accordingly as a droit to the King in his office of Admiralty. *Ibid.*

29. Application for monition against the master and owner of a privateer, not commissioned against the Dutch, to bring in the proceeds of a Dutch prize, and show cause why they should not be condemned as droits of Admiralty, granted; and one of the parties having afterwards appeared, and admitted that they had no commission, proceeds condemned as droits of Admiralty. *The Abigail*, *Hammond*, 4 C. Rob. 72.

30. A prize captured by a tender not duly commissioned, condemned as a droit of Admiralty. *The Melomane*, *Colas*, 5 C. Rob. 41.; *The Island of Curaçoa and its Dependencies* (Lords, May, 1805), *Ibid.* 282. n.

31. The shares in a prize of tenders not duly commissioned, and other non-commissioned vessels effecting services as joint-captors, will be condemned as droits of Admiralty. *The Zepherina*, *Lima*, 2 Hagg. 320.

32. A very ancient grant has given to the Lord High Admiral the benefit of all prize taken by persons not commissioned: and it lies on the individual captor in every case to show the authority by which he is entitled to take for his own benefit. *The Melomane*, *Colas*, 5 C. Rob. 41.

### 4. Captures by privateers between the application for, and grant of, letters of marque.

33. A French enemy ship, taken by a privateer having a letter of marque against America on board, and which had petitioned for a letter of marque against France, which, however, had not at the time of capture been granted, condemned as a droit of Admiralty taken by non-commissioned captors. *Le Grand Terrein*, Hay & Marriott, 155.; *La Bonne Amitié*, *Ibid.* 160.; *The Xavier*, *Ibid.* 219.; *La Mignone*, *Ibid.* 221.

34. A vessel which had been fitted out as a private ship-of-war applied for letters of marque, which the Commissioners of the Admiralty, on the 29th of December,

\* 1. The Lord High Admiral is entitled to all the goods of the King's enemies taken without commission, or found or by accident brought within

the admiralty commission. *Sir L. Jenkins*, vol. i. 89. 98.

granted a warrant to the Judge of the Admiralty to issue; but, by reason of the pressure of business in the Admiralty Court, the letters of marque did not issue until the 1st of January following. A prize taken by such vessel conjointly with a commissioned ship, on the 30th of December, condemned (save as to the share of the commissioned ship therein) as a droit of Admiralty, the application and warrant for the letters of marque being held insufficient to vest any interest on intermediate captures until the letters of marque were actually issued. *The Twee Gesuster, note to The Cape of Good Hope*, 2 C. Rob. 285.; *Le Franc, Caspe*, Ibid.

5. *Captures by privateers duly commissioned, but not having the master on board at the time of capture.*

35. A prize captured by a revenue cutter having a letter of marque, condemned as a droit of Admiralty, the master not having been on board at the time of capture. *The Charlotte, Witt*, 5 C. Rob. 280.

6. *Derelict property.\**

36. By the Order in Council of 6th March, 1605-6, it is declared that all ships forsaken by the company belonging to them shall belong to the Lord High Admiral, unless a ship commissioned shall have given the occasion to such dereliction, and the ship so left be seized by such ship pursuing, or by some other ship commissioned, then in the same company and in pursuit of the enemy. So also in the case of goods thrown out of any ship pursued.

37. By the marine law the Lord High Admiral has the custody of derelicts found at sea; and if no owner appear, they become perquisites of Admiralty. *The Aquila, Lumsden*, 1 C. Rob. 42.; *The King v. Property Derelict*, 1 Hagg. 384.

38. By the general law all goods found afloat and derelict on the high seas belong as droits, to the Crown in its office of Admiralty. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 270.

39. Derelicts are *prima facie* droits. They are so until a claim is allowed, though they do not become actual droits until a

year has expired without such a claim, till when they are only derelicts. *The Thetis*, Ibid. 235.

40. By 9 & 10 Vict. c. 99. s. 11. when no claim to any article of wreck, goods jetsam, flotsam, ligan, or derelict, &c. in the custody of any receiver of droits or collector of Customs under this act shall be established by the owner or lord of the manor, grantee of the Crown, &c., within the time therein limited, such article shall be deemed a droit of Admiralty, and be sold by the receiver without any legal process, and the net proceeds, after payment of salvage and charges, transmitted to the Receiver-General of Droits.

*As to what is derelict — et contra — see DERELICTS.*

7. *Other cases.*

41. A ship was seized in port for the King, as for a forfeiture by reason of importation of prohibited goods; she was also seized in port by the officers of the Admiralty as a droit and prize of war: *Held*, that the importation was a forfeiture to the Crown, antecedent to the seizure for the Lord High Admiral. *The Adventure, Brothers, cited in The Dickenson, Merton, Hay & Marriott*, 18.

42. *Seemle*, that in the case of donation from the enemy captor to the original owner, the prize must be condemned as a droit of Admiralty; and the donee could acquire no interest except as salvor or from the liberality of the Crown. *The Santa Cruz, Picoa*, 1 C. Rob. 76.

43. Certain Dutch ships were forcibly detained at the Cape of Good Hope before declaration of hostilities against Holland. On the part of the Admiralty, they were claimed as droits of Admiralty on the ground that, at the surrender, the port became a British port under the protection of the Lord High Admiral, and that any seizure made in it, after that time, of enemy's property, is to be considered as so made in his name: but the Court, finding that they were seized preparatory to hostilities, *held* that the seizure related forward to such hostilities, and condemned them as prize *jure coronæ*. *The Gertruyda, De Vries*, 2 C. Rob. 211.

44. Tin plates for canister shot, which

\* 2. The Lord High Admiral is entitled to all wrecks, jetsam, flotsam, ligan, and derelicts not granted to the lords of manors or others. *Sir L. Jenkins*, vol. i. 89.

had been put on board a cartel ship by a British manufacturer at Dover, and were seized by the officers of Customs, condemned as droits of Admiralty. *La Rosine*, Ibid. 372.

45. A ship and cargo condemned as, a droit to the Crown as enemy property taken prior to the declaration of hostilities. *The Orion*, *Petersen*, 1 Acton, 205.

46. Ships seized in the harbour of an island conquered and taken possession of by British forces are condemnable as droits of Admiralty, though the conquest of the island may not have been confirmed to this country by a treaty of peace. *The Poltina*, *Julius*, 1 Dodson, 450.

47. A whale discovered by some fishermen three miles from the shore, and towed by them on to Whitstable Beach, *Held* to belong to the Lord Warden of the Cinque Ports as found and taken within his jurisdiction, and not to the Commissioners for executing the Office of Lord High Admiral of England, on the ground that the Crown was entitled to the whale as a royal fish; and that having apparently, from the patents of both functionaries, granted such rights to both the claimants, the grant to the Lord Warden, as being held to be the more ancient office of the two, excluded the like grant to the Lord High Admiral. *The Lord Warden of the Cinque Ports v. The King in his Office of Admiralty*, 2 Hagg. 438.\*

48. Property recaptured from pirates, if unclaimed, belongs to his Majesty, in his office of Admiralty, as *bona vacantia*. *The Marianna*, *Dos Santos*, 3 Hagg. 208.

49. Claim of a lord of a manor against the King in his office of Admiralty, to certain casks of brandy picked up on the coast, founded on certain ancient grants from the Crown of the castle and manor of Corfe, its rights and privileges, wreck of the sea, &c. to the ancestor of the claimant and his heirs, privileged thereunder to exercise the office of Admiral in those parts, pronounced against, so far as the same extended to an asserted jurisdiction of three miles from low-water mark on the high sea, or to things flotsam, jetsam, or ligan

thereon, such grants being *held* to confer immunities to the extent of the usual land jurisdiction only, that is, to low mark at low water. Of the fifty-nine casks claimed (though forty-nine only were proceeded against), six picked up on the high sea, upwards of three miles from low-water mark, decreed to be droits of Admiralty; thirty-eight picked up outside low-water mark, but within three miles thereof, similarly decreed to be droits; five picked up afloat between high and low-water mark, but never having touched the ground, and not having, therefore, become wreck of the sea, similarly decreed to be droits; three picked up aground, the tide being out, between high and low-water mark, decreed to the claimant as wreck of the sea; five picked up, having taken the ground, between high and low-water mark, though still moved by the waves—the sea at one time surrounding them, and at another leaving them dry,—considered as not on the high sea, but as wreck of the sea, and decreed to the claimant; one picked up afloat, though the land underneath was dry at low-water even in neap tides, decreed to be a droit; one picked up aground decreed to the claimant. *The King v. Forty-nine Casks of Brandy*, Ibid. 257.

50. Claim of a lord of a manor to two casks of tallow picked up on the coast pronounced against, such casks being *held*, having only touched the ground, and being afloat, though between high and low-water mark, to be flotsam and not wreck, and to belong therefore to the King in his office of Admiralty, as droits. Claimant's costs allowed out of the droits. *The King v. Two Casks of Tallow*, Ibid. 294.

51. Things which have once touched the ground, though afterwards afloat, do not thereby necessarily become the property of the lord of the manor. Things having become fixed on the shore, and afterwards the sea leaving them and then returning, *quære* wreck or droits. *The King v. Thirty-two Casks of Tallow*, Ibid. 299.

*See antè*, No. 40.

*See* WRECK.

\* 3. The Lord High Admiral is entitled to the lords of manors and others. *Sir L. Jenkins*, vol. i. 89.

## EVIDENCE.

## I. WHAT EXTRA-ARTICULATE — ET CONTRA, 150.

1. *Of objections to* — 150.

## II. WHAT ADMISSIBLE — ET CONTRA, 150.

## III. OF SECONDARY EVIDENCE, 151.

## IV. DOCUMENTARY, 151.

1. *Generally*, 151.2. *Of the construction of* — 151.3. *Of the authentication of* — 151.4. *Of the right to the production of—and the inference arising from its non-production*, 151.5. *Sentences of foreign Courts generally*, 152.6. *Sentences of foreign Courts of Admiralty*, 152.7. *Ship's log*, 152.8. *Correspondence of master or agent*, 153.9. *Copies of papers in the custody of the General Register Office and of Collectors of Customs*, 153.10. *Other documents*, 154.11. *Licences* — see LICENCES.12. *Mariners' Contracts* — see MARINERS' CONTRACTS.13. *Protests* — see DAMAGE, SALVAGE, (civil).14. *Ship's Register* — see SHIP'S REGISTER.

## V. PAROL DECLARATIONS, 154.

1. *Of agent, how affecting principal*, 154.2. *Of various parties*, 154.

## VI. ADMISSIONS, 154.

## VII. PRIVILEGED COMMUNICATIONS, 155.

## VIII. OPINIONS OF SCIENTIFIC PERSONS, 156.

## IX. OF FOREIGN LAW, 156.

## X. OF PARTIES DEAD OR BEYOND SEAS, 156.

## XI. OF THE ADMISSION OF AFFIDAVITS AFTER PUBLICATION, 157.

## XII. OF THE INSPECTION OF — 157.

## XIII. MISCELLANEA, 157.

See AFFIDAVITS, ANSWERS, EXAMINERS, PLEADINGS, WAGES, WITNESSES.

## I. WHAT EXTRA-ARTICULATE — ET CONTRA.

1. It is not a material, only a technical objection to certain parts of the evidence of a witness, that conversations therein deposed to were not set out in the plea on which he was examined. *The Harvey, Peach*, 2 Hagg. 83.

2. Particular specifications should not be taken in general where the article is in the general form; but *semble*, that cases may arise when such a specification, under an article in the general form, may be received, particularly in cases merely civil; where it is introduced, however, such specification should be exact as to time and place, and all other material circumstances. *Evans v. Evans*, 1 Hagg. (Cons.) 96. n.

3. It is not possible to set forth in the act on petition every minute circumstance to which the witnesses can depose; and it would be mischievous to do so, for there could then be none of those corroborating facts of the original statement which so materially tend to elucidate the truth. The fact of a pilot having been put on board another ship at the same time that the vessel salvaged was asserted to have been attempted

to be boarded by a pilot, but without success, a circumstance not stated in the act, but put forward in the proofs, *Held* to be admissible evidence, as supporting the general statement in the act, that a pilot could have been put on board with ease and facility. *The Towan*, 8 Jur. 222.

1. *Of objections to* — †

4. On motion to expunge from affidavits matter which had not been embodied in the act on petition, on the ground that the opinions of Trinity Masters might be unduly biassed by such matter, the Court intimated it should reject the motion as to merely irrelevant matter, which should be objected to at the hearing, and not before, but should grant it as to irrelevant matter of so extraordinary a character, that the Trinity Masters might have such an undue impression made on their minds as it would be out of the power of the Court to efface at the hearing. *The Speed*, 7 Jur. 1068.

## II. WHAT ADMISSIBLE — ET CONTRA.

## 5. The clerk in a solicitor's office, speak-

\* 1. See on this head, *Harrison's Digest*, vol. ii. p. 2690., and *Gresley's Law of Evidence in Courts of Equity* (2d edit. by Calvert).

† 2. As to the objections to evidence which

may be taken in Courts of Equity at the hearing of the cause, see *Gresley's Law of Evidence* (2d edit. by Calvert), part 2.

ing to facts within his knowledge, may refer to the office journal to fix dates of those facts, but cannot speak to facts not within his own knowledge from entries in the journal not in his handwriting. *Butlin v. Barry*, 1 Curteis, 617.

6. Passages in a work at variance with other passages in the same work referred to by a witness in proving foreign law, are not admissible in evidence to show the testimony to be erroneous, unless supported by testimony. *Nelson (Lord) v. Bridport (Lord)*, 10 Jur. 871.

7. Where a witness has referred to specific passages in a particular work, other passages in the same work not specifically pointed out by him are inadmissible in support of his testimony. *Ibid.*

8. The joint opinion of two witnesses, sworn by them to be in accordance with the foreign law, though given upon an *ex parte* case, *Held* to be admissible, subject to any question respecting the correctness of the case. *Ibid.*

### III. OF SECONDARY EVIDENCE.\*

9. The rule respecting best evidence is that where there is evidence of a superior character, inferior evidence cannot be given without the non-production of the superior evidence being accounted for. *Woods v. Woods*, 2 Curteis, 522.

*See post*, Nos. 17. 51.

### IV. DOCUMENTARY.

#### 1. Generally.

10. It is a rule of the Court of Admiralty that papers by themselves prove nothing; they are a mere dead letter if not supported by the oaths of persons in a situation to give them validity. *The Juno, Beard*, 2 C. Rob. 122.

#### 2. Of the construction of—

11. The Court of Admiralty, like all other courts of law, is bound to take the meaning of a written document from its contents, and not from parol explanation. In construing written documents, of whatever nature, it is a cardinal rule applicable to all cases that no parol explanation can be attended to, though evidence of the circumstances under which it was given may be received. *The Glasgow Packet*, 8 Jur. 674.

#### 3. Of the authentication of—

12. By 8 & 9 Vict. cap. 113. sect. 1., whenever, by any act now in force, or hereafter to be in force, any certificate, official or public document, or proceeding of any corporation, a joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, &c., the same shall be admitted in evidence, if stamped, or sealed and signed, or signed alone, as required, or stamped and signed as directed by such acts, without any proof of the seal, stamp, or signature, and without any further proof thereof, in every case in which the original record could have been received as evidence.

13. By s. 2. all Courts, Judges, &c., are to take judicial notice of the signature of equity or common law judges attached to an official document.

14. The articles of a foreign ship made abroad, regulating the wages of the sailors, &c., even where the sailors had been hired in London, and which articles are lodged with the consul in London, may be given in evidence of the agreement for the hiring and wages to the sailor without being stamped. *Winbled v. Malmberg*, 1 Esp. 454. (Eyre.)

15. A seal is unnecessary to the validity of a notarial act. *Smyth v. Smyth*, 4 Hagg. (Eccl.) 72.

#### 4. Of the right to the production of, and the inferences arising from its non-production.

16. A party interested in documents in the custody of his adversary is entitled to their production. *Inman v. Hodgson*, 1 Y. & J. 28.

17. Length of time alone may sufficiently account for the non-production of documents. *The Molly, Eadie*, 1 Dodson, 396.

18. In a cause of damage a letter to his owners, given by the master of the vessel doing the damage to the master of the vessel damaged, which letter was not produced, *Held* to contain an admission of the damage. *The Neptune the Second*, 1 Dodson, 469.

19. The suppression of some of a series of documents, admitted to be in possession of the party who produces the others, is evidence that the documents withheld

\* 3. On the law of secondary evidence, see *Gresley's Law of Evidence in Courts of Equity*, (2d edit. by Calvert), part ii. cap. 3.

afford inferences unfavourable to that party who withholds them. *Owen v. Flack*, 2 Sim. & Stu. 606.

5. *Sentences of foreign Courts generally.*

20. The sentence of a foreign Court of competent jurisdiction is evidence of *res judicata*, and is not to be called in question in a collateral cause in the Courts of this kingdom. *Hamilton v. Dutch East India Company*, 8 Bro. P. C. 264.

21. An exemplification of a sentence in Holland under the common seal of the States may be read in evidence in a suit in Chancery. *Anon.* 9 Mod. 66.

22. Decree at Leghorn allowed to be read as evidence. *Barrow v. Jameman*, Dick. 48.

6. *Sentences of foreign Courts of Admiralty.\**

23. A sentence of a foreign Court of Prize is conclusive evidence upon every matter within the jurisdiction of such Court upon which it has professed to decide. *Bolton v. Gladstone*, 5 East, 155., 1 Smith, 372., 2 Taunt. 85.

24. Where, therefore, a Danish ship warranted neutral was captured by a French ship-of-war (Denmark being at peace with France), and the Court in which she was libelled as prize, professing to consider that the build of the vessel was unknown, that she was sold to a neutral subject only since the declaration of war, that the bill of sale did not mention her place of build or her original owner, that the mate and third officer were naturalised Danes only since the declaration of war, and that the greater part of the crew were subjects of hostile powers, condemned the ship as good and lawful prize, such condemnation was conclusive against the warranty of neutrality in an action on a policy of insurance against the underwriters, and no evidence could be received to falsify the facts affirmed by such sentence, nor to show that the conclusion was unfounded, although the sentence proceeded to refer to several ordinances of France containing rules to direct the judgments of its Courts in the consideration of the question of neutrality, by which rules the Prize Court appeared to have regulated their judgment in the conclusion they had drawn. *Ibid.*

25. A sentence of a foreign Court of Admiralty is only conclusive here in an action on a policy of assurance as to the express ground of the sentence, but not as to any of the premises (noticed in the consideration part of the sentence) that led to the adjudication. *Christie v. Secretan*, 8 T. R. 192.

26. The sentence of a foreign Court of Admiralty is evidence only of what it positively and specifically affirms in the adjudicative part of it, not of what may be gathered from it by way of inference. *Fisher v. Ogle*, 1 Camp. 418. (Ellenborough.)

27. The sentence of a foreign Court of Admiralty condemning a vessel for attempting to violate a blockade is not conclusive unless the fact upon which the condemnation proceeded appears on the face of the sentence free from doubt and ambiguity. It cannot be collected by mere inference, nor can it be left to uncertainty whether the vessel was condemned upon one ground, which would be a just ground of condemnation by the Law of Nations, or on another ground which would only amount to a breach of the municipal regulations of the condemning country. *Dalgleish v. Hodgson*, 5 M. & P. 407., 7 Bing. 495.

28. A notarial copy of the condemnation of a ship as not being worth repairing, is only evidence of the fact of her having been condemned, not of the particular defects on which the condemnation was grounded. *Wright v. Burnard*, 2 Esp. 700. (Kenyon.)

29. The sentence of a foreign Court of Admiralty cannot be received in evidence without proof of the ship having been captured. *Marshall v. Parker*, 2 Camp. 69. (Ellenborough.)

See ADMIRALTY, PRIZE.

7. *Ship's log.†*

30. The evidence of a ship's log is of a very high class. *L'Etoile, Philibert*, 2 Dodson, 113.

31. The evidence of the log is to be received with jealousy where it makes for the parties, as it may have been manufactured for the purpose, but as of the most authentic kind when against them. *The Eleanor, Hall*, 1 Edwards, 163.

\* 4. *Quare*, how far are the facts stated in the decree of a foreign Prize Court to be held as *probatum probata* in the Courts of this country. *Henderson, Reddell & Co. v. Lothian* (1800). 12 F. C. 438., Mor. No. 4. App. Insurance, affirmed on merits (1803), 12 F. C. 434. n. (Scotch Rep.)

† 5. An entry in the log-book is *prima facie* evidence of its truth in every particular; and to be falsified, it must be disproved by satisfactory evidence. *Douglass v. Eyre*, Gilpin's (AMERICAN) Rep. 147.



32. The log-book of a party suing can never be made evidence in his favour under any shape. *The Sociedade Felix, Joao de Souza Campos*, 1 W. Rob. 311.

33. The log-book of a frigate A., the commander of which had entered into an agreement with that of frigate B. to share prizes, *Held* to be inadmissible evidence on behalf of B. in a claim of joint-capture. *Le Niemen, Dupotet*, 1 Dodson, 9.

34. In the absence of other evidence, the ships' logs of the asserted joint-captors admitted as evidence in a claim of joint-capture. *Le Bon Adventure, Lamoriniere*, 1 Acton, 211.

35. The log of a tender, a joint-captor, *Held* to be inadmissible evidence in a claim preferred by the vessel to which the tender was attached, to share through her as joint-captor, such vessel being entitled to share in the tender's proportion of prize. *The Zepherina, Lima*, 2 Hagg. 318. n.

36. In a suit for wages a log-book brought into Court by the owners, not pleaded but asserted to be in the handwriting of the mate, the party suing for wages, permitted to be adverted to. Objections thereto overruled. *The Malta, Young*, 2 Hagg. 158. n.

37. Affidavit of the captain in explanation of the log, with a letter written by him, *recenti facto*, admitted. *L'Etoile, Philibert*, 2 Dodson, 114.

38. It is a convenient practice for those parts of the log which are material to be agreed upon by both parties and extracted. *The Malta, Young*, 2 Hagg. 159. n.

#### 8. Correspondence of master or agent.

39. The letters of an agent of the assured in a foreign country, stating the contents of letters from another agent of the assured, are not evidence against the principal. *Kahl v. Jahnsen*, 4 Taunt. 565.

40. Letters written to the assured by his agent or correspondent on the Continent are not admissible as evidence against him. *Reyner v. Pearson*, 4 Taunt. 662.

41. Letters of an agent to his principal, in which he is rendering him an account of the transactions he has performed for him, are not admissible as evidence against the principal. *Langhorn v. Alnutt*, 4 Taunt. 511.

42. Letters, written by an agent in making a contract, which form part of the contract or of the *res gestæ*, are admissible in evidence against the principal. *Ibid.*

43. Letters of the master to his owners, written *recenti facto*, apprising them of a seaman's desertion, *Held* to be inadmis-

sible evidence for the owners in a suit for wages brought by the mariner, and part of an allegation on their behalf pleading same rejected accordingly. *The Jupiter, Crosbie*, 2 Hagg. 225.

*See post*, Nos. 70. 72, 73.

#### 9. Copies of papers in the custody of the General Register Office and of Collectors of Customs.

44. By 7 & 8 Vict. c. 112. s. 25., office copies of all documents in the custody of the General Register Office, and certified by the registrar of seamen in such office to be true copies, shall be admitted in evidence as fully as the original; and every copy of a document and indorsement thereon delivered under this act to that office, by any owner or master, shall be admitted in evidence against him as fully as the original.

45. By 8 & 9 Vict. c. 89. s. 43. collectors of Customs and their subordinates are to permit inspection of declarations, books of registry, &c. in their custody, and to suffer copies to be taken thereof; and the same, on being proved to be true copies, are to be received as evidence, without the production of the originals or the attendance of the comptroller or officer of Customs to verify the same.

#### 10. Other documents.

46. In a cause of collision, the protest of the master of a foreign vessel in tow by the vessel run foul of is *res inter alios acta*, and not admissible evidence, except in a case of necessity, where other evidence could not be obtained. *The Betsey Caines, Wilson*, 2 Hagg. 28.

47. Extract from a police record annexed to an allegation of the owners, in a suit for wages, and in proof of the mariner's misconduct, rejected. *The Susan, Hamilton*, *Ibid.* 229. n.

48. The resolutions of a pilot committee, held for the purpose of investigating the conduct of the pilots in charge of the vessels which came into collision, cannot be pleaded in a cause of collision. An article of an allegation pleading the same rejected accordingly. *The Lord Seaton*, 9 Jur. 603.

49. *Quære*, whether the record of a conviction of a material witness for perjury in her evidence in a cause would be admissible evidence in such cause? *Kenrick v. Kenrick*, 4 Hagg. (Eccl.) 133.

50. To ascertain the date of a declaration of war, the declaration of the ambas-

sador of the Court abroad, transmitted by him to the Secretary of State's office, is evidence. *Thelluson v. Cosling*, 4 Esp. 266. (Ellenborough.)

51. In Batavia parties about to make a contract go before a notary, who writes in his book the contract, which is then signed by them. Copies of this contract may be obtained by either party in the absence of the other. A notarial copy of a charter-party entered into at Batavia, *Held*, not to be either evidence of the original contract, nor properly secondary evidence of it. *Brown v. Thornton*, 1 Nev. & P. 339., 6 Ad. & E. 185., W. & D. 11., 1 Jur. 198.

#### V. PAROL DECLARATIONS.

##### 1. *Of agent, how affecting principal.*

52. What is said by an agent respecting a contract or other matter in the course of his employment, which contract or matter is the foundation of the action, is good evidence to affect the principal. *Aliter*, what is said by him on another occasion. *Peto v. Hague*, 3 Esp. 134. (Ellenborough); S. C. not S. P. 1 Smith, 417.

53. An agent or servant can only act within the scope of his authority; therefore declarations made by him as to a particular fact are not admissible in evidence unless they fall within the nature of his employment as such agent or servant. *Schumack v. Lock*, 10 Moore, 39.; S. C. *Fairlie v. Hastings*, 18 Ves. jun. 123.

##### 2. *Of various parties.*

54. In a cause of collision, the confession of the master *Held* to be admissible, and an article of a libel pleading the same admitted to proof. *The Manchester, Macleod*, 1 W. Rob. 62.

55. In a cause of collision, an article of an allegation pleading a declaration (not on oath) of the pilot in charge of the vessel proceeded against, that he had given certain orders, which, if obeyed, would have prevented the collision, and the declaration of the seaman to whom such orders were given, that he had heard, but misunderstood, and did not follow them, rejected, the Court holding that the declaration of the pilot (who was taken on board under a compulsory statute, relieving the owners of responsibility), could not be made evidence against the owners; and

that, as the principle of the mariner being the owner's agent was the only principle upon which the seaman's declaration could be received, and did not apply, his declaration must also be rejected. An article in a responsive allegation, afterwards given by the opposite party, pleading contrary declarations by the mariner on the same point, also rejected. *The Lord Seaton*, 9 Jur. 603.

56. In an action by the master of a ship for freight, the declarations of the owner, for whose benefit the action is brought, are evidence for the defendant. *Smith v. Lyon*, 3 Camp. 465. (Ellenborough.)

#### VI. ADMISSIONS.

57. A formal admission of fact by the seizer is conclusive. *The Matchless, Vint*, 1 Hagg. 98.

58. Acknowledgment in writing by the master of the capturing vessel, *recenti facto*, of an asserted joint-captor having been in chase and sight at the time of capture is evidence of the highest species, and scarcely to be averred against. The effect of such an instrument is conclusive to put the other party in possession of every legal right, unless it be set aside and discharged. It might, however, be impeached on the ground of collusion or intimidation. *The San Jose, De Sota*, 6 C. Rob. 249.

59. An offer to pay a demand (*semble*, a bottomry bond, contended afterwards to have been discharged), if it do not bind the party as an acknowledgment of the debt, is still a proof of a doubt existing in his mind upon the validity of any prior discharge of it. *The Huntcliffe, Cole*, 2 Hagg. 288.

60. In courts of equity as well as courts of law a party admitting a fact which gives jurisdiction to a Court, and appearing and submitting to that jurisdiction, upon general principles and upon all analogies, can never recede from those facts and withdraw that admission. *Donegal v. Donegal*, 3 Phill. 609.

61. The admission by the proctor of a party contesting suit is sufficient proof of the exhibits of the adverse party. *Hillier v. Milligan*, 1 Lee, 532.

#### VII. PRIVILEGED COMMUNICATIONS.\*

62. A solicitor cannot be compelled, at the instance of a third party, to disclose

\* 6. See on this head *Harrison's Digest*, vol. ii. p. 2736. *et seq.*

7. Where the exceptions to the evidence of a

witness were proposed to be established by the testimony of persons consulted as proctors by the party in the cause (on whose behalf the witness

matters which have come to his knowledge in the conduct of professional business for his client, even though such business has no reference to legal proceedings either existing or in contemplation. *Greenhough v. Gaskell*, 1 Myln. & C. 98.

63. A solicitor cannot refuse to answer questions which have come to his knowledge collaterally, and not confidentially or from other quarters. *Mackenzie v. Yeo*, 2 Curteis, 868.

64. The answer to an interrogatory confined to the point on which the party's solicitor was produced is admissible, although he gained his information as solicitor. *The King's Proctor v. Daines*, 3 Hagg. (Eccl.) 235.

65. Confidential communications between attorney and client are not to be revealed at any period of time: not in an action between third persons, nor after the proceedings to which they referred are at an end, nor after the dismissal of the attorney. The privilege of not being examined, to such points as have been communicated to the attorney while engaged in his professional capacity, is the privilege of the client, not of the attorney, and it never ceases. *Mackenzie v. Yeo*, 2 Curteis, 867., 1 Phill. on Ev., 139., 5th edit.

66. Where an attorney is obliged to employ an agent to collect evidence in support of legal proceedings, communications of such agent to his employer, relating thereto, are privileged. *Steele v. Stewart*, 1 Phill. (Ch.) 471., 13 Sim. 533.

67. Where an attorney directly or immediately derives information from his client, that is a privileged communication; but the matters communicated must have come directly or immediately from the client; for if the facts come collaterally from another person, the attorney will be bound to answer. *Mackenzie v. Yeo*, 2 Curteis, 870.; *Lloyd v. Lloyd*, Ibid. 263.

68. Declarations made by a party in the cause to a solicitor whom the party had at the time requested to act on his behalf as his solicitor, rejected as privileged communications. Article of an allegation pleading same rejected accordingly. *Smith v. Fell*, Ibid. 667.

69. Where the clerk of the plaintiff's attorney called upon the defendant for the purpose of obtaining a compromise, *Held*

that what passed was privileged. *Jardine v. Sheridan*, 2 Carr. & K. 24.

70. Letters written by the testator to his solicitor, with regard to a bond executed by the testator in favour of the party propounding the codicil, *Held* not to be privileged communications as between the solicitor and the executor opposing the codicil, by whom he was also employed as his solicitor in the matter; and that, if they were so, the privilege had been waived, the witness having been produced to state what passed on the instructions for the preparation, &c. of the bond, and the adverse party being entitled to cross-examine a witness as to all facts on which he has been examined. *Mackenzie v. Yeo*, 2 Curteis, 875.

71. Information collected and reduced into writing by a solicitor from a subscribed witness to a codicil is not privileged; but, *semble*, it would be otherwise if collected by the client and communicated to the solicitor. *Ibid.* 871.

72. Letters written to the principal solicitor by another solicitor, also employed by the client to collect evidence in the matter, and with directions to communicate it to the principal solicitor, *Held* to be privileged communications. *Ibid.* 875.

73. Letters written by a defendant after the commencement of a suit to an unprofessional agent abroad, but "confidentially and in reference to the defence," &c., *Held* not privileged. *Kerr v. Gillespie*, 7 Beav. (Ch.) 572.

74. A defendant who relies on the privilege is bound to bring himself clearly and distinctly within it. *Desborough v. Rawlins*, 3 Myln. & Cr. 515. 519.

*See ante*, Nos. 39. to 43.

#### VIII. OPINIONS OF SCIENTIFIC PERSONS.

75. The opinions of nautical men on a question of seamanship, or of men of science on points of science generally, where a clear statement of all the facts has been laid before them, is admissible evidence in the Court of Admiralty as in all other Courts; but, *semble*, where the Court is assisted by Trinity Masters, it will not allow the proceedings to be encumbered by such evidence. Affidavits of

was produced) in a former suit, *Held*, that such communications were privileged. *Casey and Shanahan v. Shanessy and others*, 4 Notes of Cases, 150.

8. *Quare*, whether such persons could, under such circumstances, be permitted to prove a negative without making disclosures. *Ibid.*

two of the Elder Brethren of the Trinity House, containing their opinions on the nautical points of a case of damage, rejected by the Court on the ground that it had the assistance of the Trinity Masters in the case. *The Ann and Mary*, 7 Jur. 1001.

76. In collision cases a nautical witness cannot be asked whether he thinks, having heard the evidence in the cause, that the conduct of the captain was correct or not. *Sills v. Brown*, 9 Car. & P. 601.

77. In a collision case, *Held*, that a nautical person was a competent witness to say whether, upon the evidence heard, he was of opinion that, by proper care on the part of the defendant's servants, the collision could have been avoided. *Fenwick v. Bell*, 1 Car. & K. 312.

#### IX. OF FOREIGN LAW.

78. Foreign law is upon all principles of common jurisprudence always to be proved as a fact. *Le Louis, Forest*, 2 Dodson, 241.

79. If reliance be placed on a difference between the law of England and a foreign state, the party relying on the difference is bound by witnesses or authorities to show that there is such a difference. *Smith v. Gould and others (The Prince George)*, 4 Moore, 26.

80. Foreign law and its application are in English Courts proved, like any other facts, by properly qualified witnesses, who can state, from their own knowledge and experience gained by study and practice, not only what are the words in which the law is expressed, but also what is the proper interpretation of those words, and the legal meaning and effect of them as applied to the case in question. *Nelson (Lord) v. Bridport (Lord)*, 10 Jur. 871.

81. In some cases, where there is a variance or want of clearness in the testimony of the witnesses, the Judge may take on himself to construe the words of a foreign law, and determine their application to the case in question; but this is a course to be exercised with caution. *Ibid*.

82. It is sufficient if the witness, being proved to be experienced, and to have had the means of acquiring an accurate knowledge, state distinctly his opinion as to the law; but he may, if he pleases, refer to laws or treatises, for the purpose of aiding his memory, and assisting him in the subject of his examination. In general, however, it is the testimony of the witness, and

not the authority of the law or text-writer detached from the testimony of the witness, which is to influence the Judge. *Ibid*.

83. It would be advantageous to have every law or commentary referred to by a witness produced and proved, for the purpose of cross-examination as to the interpretation thereof; but a party is not bound to produce and prove the same, the evidence of the witness being admissible without that course. *Ibid*.

*See ante*, Nos. 6, 7, 8.

#### X. OF PARTIES DEAD OR BEYOND SEAS.

84. The deposition of a witness taken before the coroner on an inquiry touching the death of a person killed by the collision, is receivable in evidence in the action for damages, if the witness be shown to be beyond the sea. *Sills v. Brown*, 9 Car. & P. 601. (Coleridge.)

85. The declaration of a dead person is good adminicular proof in support of other witnesses, but not of itself sufficient to support facts contrary to his own acts. *Robins v. Sir Wm. Wolseley*, 2 Lee, 475.

86. The handwriting and character of a living witness, but who was resident in an enemy's country, admitted to proof. *Miller v. Sheppard and others*, *Ibid*. 520.

87. The evidence of a witness dying before being repeated admitted. *Hill v. Bulkeley*, 1 Phill. 280.

88. The declarations and affidavit of a deceased person relating to matters in which he himself was concerned admitted to proof. *Robins v. Sir Wm. Wolseley*, 2 Lee, 34. 443.

#### XI. OF THE ADMISSION OF AFFIDAVITS AFTER PUBLICATION.

89. Motion after publication to permit further affidavits to be given in, and to allow further time to procure them, the parties being at sea, on the ground that it had been intended originally to apply for time to procure these affidavits, but that the case had been closed through inadvertence of the proctor, granted; the Court intimating, however, that it would view the affidavits introduced at such a stage of the cause with great suspicion, and that, without reference to the result of the suit, the party would be liable to the costs of the application, should the affidavits prove unnecessary. *The Speed*, 7 Jur. 1069.

## XII. OF THE INSPECTION OF —

90. Inspection by the registrar of depositions (taken abroad) not allowed prior to publication. *Swift v. Swift*, 4 Hagg. (Eccl.) 144.

## XIII. MISCELLANEA.

91. The Court cannot, legally speaking, rely upon the representation of counsel as to the effect of evidence not taken in the cause. *The Blake, Hadden*, 1 W. Rob. 86.

92. *Semble*,\* that to prove the acts of state of a foreign government copies should be produced examined with the public archives abroad. *Richardson v. Anderson*, 1 Camp. 65. n. (Ellenborough.)

93. Evidence of a practice in contravention of a bye-law is not receivable. *Sills v. Brown*, 9 Car. & P. 601. (Coleridge.)

94. The assertion of princes is not to be taken as conclusive legal proof. *The Twee Gebroeders, Northolt*, 3 C. Rob. 338.

95. Great respect is due to the declaration of a Government of a state, though not to the extent that the convoy of a vessel of the state, or public certificates that the goods on board the convoyed ships are the property of its subjects, should be at once received as authority to establish that fact, and supersede all further enquiry; because Governments may be imposed upon with regard to facts of that nature, which they can take only on the representation of individuals. Where, however, there is an avowment of the state as to the

nature and purpose of a particular consignment, of which it could have a thorough knowledge, it would be a breach of that comity and respect due to the declarations of an independent state to doubt the truth of such an assertion. *The Huntress, Stinson*, 6 C. Rob. 111.

96. An objection in the Ecclesiastical (Consistory) Court to evidence taken abroad, on the ground that it was not taken secretly, overruled. *Herbert v. Herbert*, 2 Hagg. (Cons.) 266., 3 Phill. 34.

97. Affirmative evidence (if deserving of credit) preponderates over negative evidence. *Williams v. Hall*, 1 Curteis, 606.; *Chambers and Yatman v. Queen's Proctor*, 2 Curteis, 434.

98. Evidence taken after publication is to be looked at with the greatest caution. *Young and Smith v. Richards*, 2 Curteis, 374.

99. A steam-vessel was carrying a common light on the starboard bow, and a red light on the larboard. A question arose in a case of collision, whether at a particular time the steamer's head was to the south. The evidence on behalf of the opposing vessel stated that a light was seen, but not a red light. The Trinity Masters being of opinion that if the steamer's head was to the south, according to the relative positions of the two vessels, the red light would not be visible to the other vessel, the fact that such light was not seen, *held* to be decisive on the question of the position of the steamer's head. *The Shannon and Placidia*, 7 Jur. 380.

## EXAMINERS.

1. An examiner ought not to admit specification, but adhere to the plea. It is a general rule whenever specification is introduced, it shall be so exact as to give the party full opportunity of defence. *Evans v. Evans*, 1 Hagg. (Cons.) 96.

2. But *semble* that questions may arise where a specification under such an article may be received, particularly in cases merely civil; but where it is introduced, such specification should be exact as to time and place, and all other material circumstances. *Ibid*.

3. If in a plea the construction of an article is doubtful, an examiner would act prudently in taking the evidence down, and leaving it to the Court to reject it afterwards if extra-articulate. *Ingram v. Wyatt*, 1 Hagg. (Eccl.) 103.; *Evans v. Evans*, 1 Hagg. (Cons.) 96.

4. The examiner should strongly incline to receive specific facts where the article admitted by the Court is in general form. *Evans v. Evans*, 1 Hagg. (Cons.) 96. n.

## FACTORS.\*

1. A person not empowered to sell by commission is not, whatever else he may be, a factor. The duties of a factor considered, and the meaning of the words factor and factory defined. *The Matchless, Vint*, 1 Hagg. 100.

2. If the supercargo is not to sell, or re-

ceive any commission or share of commission for the sale of the cargo, he has not the proper distinguishing feature of a factor. The consignee, to whom the goods are to be delivered for sale, is the factor, if any. *Ibid.* 101.

## FLAG SHARE.

## I. OF THE JURISDICTION OF COURTS OF EQUITY AS TO —

## II. OVER WHAT PROPERTY THE RIGHT TO A FLAG SHARE EXTENDS.

## III. CLAIMS TO — WHERE PRONOUNCED FOR — ET CONTRA.

1. *With reference to the claimant's authority to act as a flag officer.*

2. *With reference to the limits of the claimant's station.*

3. *As under orders of the claiming Admiral at the time of capture — et contra.*

4. *Where the claiming Admiral had given up his command, and was on his return home at the time of capture.*

5. *Of an Admiral of an allied force.*

## I. OF THE JURISDICTION OF COURTS OF EQUITY AS TO —

1. *Quære*, Whether it be competent to a Court of Equity to determine whether a ship-of-war was or was not, at the time of the capture of a prize, one of the squadron under the command of a particular officer? *Parker v. Toulmin*, 1 Cox, 264.

## II. OVER WHAT PROPERTY THE RIGHT TO A FLAG SHARE EXTENDS.

2. A flag officer *held* entitled, upon the same principle as with regard to prize, to share in bounty given for seizure of slaves, though not having directed the capture, and though the same was not made within the limits of his station. Costs of both parties directed to be paid out of the bounty before distribution. *The Dolores, Carbonnell*, 2 Dodson, 413.

3. *Quære*, Whether the right of the Admiral, under 6 Geo. 4. c. 49., to share in salvage for the rescue of vessels from pirates extends to foreign ships? *The Culyppo*, 2 Hagg. 213.

4. The 6 Geo. 4. c. 49., entitling a flag officer (in the proportions to be fixed by Orders in Council) to a flag share in salvage of British property recaptured from pirates, and in the bounties thereon, is retrospective as to bounty but not as to salvage. *Ibid.* 214.

5. The share of a flag officer in an award of salvage on a foreign derelict for rescue from pirates, made prior to such act, and which share had been brought into the registry, decreed to be distributed among the actual salvors, *Ibid.*

## III. CLAIMS TO — WHERE PRONOUNCED FOR — ET CONTRA.†

1. *With reference to the claimant's authority to act as a flag officer.*

6. The Court will not recognise the claim of an officer to a flag share in captures as the Admiral of the fleet, upon remote inference of such appointment by the Admiralty, or in the absence of a direct appointment. *Captures on the Jamaica Station*, 1 Hagg. 135.

\* 1. With reference to factors and mercantile agency, see *Bell's Commentaries on the Laws of Scotland*, vol. i. p. 335.; *Hutchins v. Player* (decided by Sir C. Bridgman), Bannister's Rep. 299. 306.;

see also as to the rights and duties of factors, 5 & 6 Vict. c. 39., amending 6 Geo. 4. c. 94., which also amends 4 Geo. 4. c. 83.

† See the Prize Proclamation in the Appendix.

7. An Admiral of an adjoining station has no right, upon his own authority as Admiral, and without any direct orders from the Admiralty, to take upon himself the command of a fleet; at any rate he has no right to a flag share claimed in that capacity. *Ibid.* 131.

8. Claim of a commander to a flag share in captures taken by a fleet of which he had assumed the command, pronounced against, on the ground that his orders from the Admiralty did not warrant such assumption of command, and that the same was not afterwards confirmed or acknowledged by the Admiralty so as to give validity thereto. Costs refused. *Ibid.* 129.

9. A commodore who appoints a captain under him, without having authority for that purpose, is not entitled to share as a flag officer in the distribution of prizes under his Majesty's proclamation: neither will the subsequent ratification of such appointment by the Lords of the Admiralty or the King in Council entitle him to share as a flag officer in any prizes except from the date of such ratification. *Donnelly v. Popham*, 1 Taunt. 1.

10. Where, from a change in the command on a station, it becomes doubtful to which Admiral the flag officer's share of a prize taken by a ship detached for the purpose of cruising belongs, it is clear that it does not belong to the captain in command of such ship. *Taylor v. Paulett (Lord)*, 1 H. Black. 264. n.

11. Claims of officers, not acting conformably to Admiralty orders, to flag shares in cases of splendid achievements, form, by the brilliancy of the exploits, rules for themselves, but do not form precedents for exceptions from the general rule, where the same happy circumstances do not exist. *Captures on the Jamaica Station*, 1 Hagg. 137.

## 2. With reference to the limits of the claimant's station.

12. The Admiral of a station is entitled to share in prize made within his district during his absence if he has not abdicated his command. *The St. Anne*, 3 C. Rob. 60.

13. The Admiral commanding on the Cork station issued orders to the captain of a frigate on that station to go on a particular service, and afterwards to cruise within certain limits for six weeks. The frigate, after performing the service, began

her cruise, and returned with a prize to Cork. The Admiral, having been afterwards directed by the Admiralty to take one of the frigates and proceed to Plymouth for further orders, and to direct another Admiral to take the command, accordingly directed another Admiral to take under his command the frigate among others, and afterwards took himself such frigate, and sailed in her to Plymouth, when he was appointed commander of the Channel fleet, and issued an order to the captain of the frigate to cruise for a particular purpose for a week, and, at the expiration of that time, to proceed in the execution of the former orders which he had received from him. The frigate sailed from Plymouth, and, having arrived within the limits prescribed by the former orders (which were taken to be within the limits of the Cork station), made two captures, one within and one without those limits: *Held*, that the Admiral so appointed and commanding on the Cork station at the time of the captures was entitled to the flag eighth of the prize captured within those limits, not as being privy to the former orders (which orders were not suspended by the last order, and again subsisting at the time of the capture, but were expired by efflux of time), but as Admiral of the station within the limits of which the frigate had made the capture. *Drury v. Gardiner (Lady)*, 2 M. & S. 150.

14. *Quære*, To whom would the flag share belong in the case of a prize captured by a cruiser, after a chase, out of the limits of one station into another? *Gardiner (Lady) v. Lyne*, 13 East, 574.

15. A ship detached by one commanding officer within the limits of another's command ceases (unless so detached by the special terms of such commanding officer's commission), whilst within those limits, to be under the command of the former officer, who therefore is not entitled to the flag eighth, under the proclamation, of a capture made therein. *Holmes v. Rainier*, 8 East, 502.

16. Even admitting that the commander upon one station may annex to his command a cruiser placed by the Admiralty under the command of an Admiral upon another station, he cannot, nevertheless, entitle himself to share in the prizes she may take whilst cruising under the orders he may have given her, unless taken whilst she is cruising within the limits of his station. *Lady Gardiner v. Lyne*, 13 East, 574.

17. A flag officer at the Cape of Good Hope sent a ship of his squadron within the limits of another flag officer's command in the Asiatic seas, for the special purpose of getting her repaired. The ship proceeded there, completed her repairs as directed by the latter officer, and received from him an order to convoy certain ships on her return to her former station. While executing such order, being accidentally separated from her convoy, she took a prize within the limits of the flag officer's command in the Asiatic seas, but in the course of rejoining her original flag officer: *Held*, that the latter was not entitled to the flag officer's one-eighth share of the prize, his command over the ship being suspended while she was out of the limits of his own and within the limits of another command. *Holmes v. Rainier*, 8 East, 502.

*See post*, Nos. 19, 20, 24, 25, 26, 27.

3. *As under orders of the claiming Admiral at the time of capture — et contra.*

18. The Admiral in command at the time when the prize is taken is entitled to the flag officer's share of prize. *Pigot v. White*, 1 H. Black. 265. n., 4 Dougl. 302.

19. The flag officer is entitled to the benefit of a flag share in all captures made during the prosecution of a voyage which he had directed, and which, at the time of the capture, continued without having been superseded by any other authority, notwithstanding he may not have directed that or any other capture, or that the capture was made beyond the limits of his station. *The Dolores, Carbonnell*, 2 Dodson, 413.

20. An Admiral appointed by the Admiralty, and who has actually given an order to the fleet, is entitled to share in the captures of the fleet, though not within the station at the time such captures were made. *Captures on the Jamaica Station*, 1 Hagg. 138.

21. An allegation propounding a claim on behalf of the Admiral of the station to his flag share in a capture made by a vessel acting under his orders, assisted by other vessels acting under her, admitted to proof. *The Desirée, Deplaney*, 4 C. Rob. 422.

22. Claim of an Admiral for a flag share of a capture made by a frigate formerly under his command, rejected on account

of orders given to the frigate by the Admiralty, which were *held* to constitute a separate and distinct service. *The Orion, Cushing*, Ibid. 362.

23. One of the ships of a squadron was detached by the commanding flag officer to lay off a certain place within the limits of the station, from whence the captain, without any further orders for that purpose, took upon himself, on his own responsibility (from motives which were afterwards approved of by the Admiralty), to depart and proceed as convoy with the homeward-bound trade; and in the course of the voyage home, out of the limits of his station (but nothing turned on the question of limits), took a prize: *Held*, that the superior flag officer who had, before the capture, succeeded the one by whom the order for being detached had been originally issued (admitting him to stand in the same situation in point of right) was not entitled to the flag eighth share in such prize under the King's proclamation. *Harvey v. Cooke*, 6 East, 220., 2 Smith, 341.

24. The commander of the Cork naval station, on the 3d of May, ordered the Loire frigate, under his command, to cruise for a month within certain limits mentioned (whether within the Cork station or not did not appear), but, in case of obtaining intelligence of the enemy being at sea, to return immediately and report the same to him, unless the captain should deem it more serviceable first to apprise the commander-in-chief of the Channel fleet off Brest of it, and then to return to Cork without loss of time. The Loire, having sailed and obtained such intelligence on her cruise, went off Brest, and communicated it to the commander of the Channel fleet on the 25th of May, who, on the 28th, ordered the Loire to go off Ferrol with despatches, &c., and afterwards, and whilst in the execution of her former orders from the commander of the Cork station, to look for the Jamaica homeward-bound convoy within certain limits (which were partly within and partly beyond her original cruising orders), and, if met with, to protect them up St. George's and the British Channel. The Loire, having delivered the despatches, &c. as directed, on her return took three prizes beyond, as was admitted, the limits of the Channel station, and asserted to be within the Cork station (but whether or not within the Cork station was deemed to be immaterial in this case): *Held*, that the commander-



in-chief of the Channel fleet did not, in the true meaning of his orders to the Loire, intend to retain her under his command after the execution of his orders off Ferrol, but only that she should attend to his further instructions whilst executing her original orders, and as a modification of or addition to such orders, rather than as a supersession or abrogation of them; but that, if he had so intended, he had no right so to retain her out of the limits of his command, by partial modifications of her original orders, for the purpose of entitling himself to prize taken by her out of those limits, in derogation of the rights of another flag officer. *Gardiner (Lady) v. Lyne*, 13 East, 574.

25. Where an officer is directed to perform a service within the limits of his superior officer's command, it would require a strong case to show that a distinct and independent service was intended, the presumption being, undoubtedly, that the service is coincident with the general services on which the commander-in-chief is employed. *The San Antonio*, 5 C. Rob. 209.

26. Claim of a superior flag officer for his flag share in a capture taken by an inferior flag officer within the limits of the station of the superior, pronounced for. A suggestion on the part of the actual captor, that he was employed on a separate service by order of the Admiralty, not sustained. *Ibid.*

27. The commander-in-chief of a station, together with his junior flag officer, *Held* entitled (affirming the decision of the High Court of Admiralty) to share as constructively assisting in a capture made in consequence of the detachment of another junior flag officer in chase of a particular fleet, which having escaped, and intelligence being received of another fleet cruising in a different quarter, a second chase was commenced without any fresh order, and continued until the capture was finally made within the limits of another Admiral's station, one of whose vessels assisted in the capture; the claim of the Admiral in whose station the capture was made rejected. Claim of a junior flag officer on another station, who communicated the intelligence which led to the capture, in which he also assisted, admitted. *The Diomedé*, 1 Acton, 69. 239.

4. *Where the claiming Admiral had given up his command, and was on his return home at the time of the capture.*

28. The fourth article of the King's pro-

clamation of 1797, respecting the distribution of prizes to flag officers, and directing that a chief flag officer returning home from a foreign station, shall have no share of the prizes taken by the ships left behind to act under another command, *Held* to apply as well to another command devolving by seniority, as to another chief flag officer appointed by express commission to succeed the officer returning home; and such "returning home," &c. to mean the commencement in fact of a commander-in-chief's departure from the local station of his command for the purpose of returning home, leaving his fleet behind, *viz.* leaving it for all effective purposes, under the control of another commander, competent, under the terms of the proclamation, to command in his stead. Where, therefore, a flag officer, commander-in-chief in the Mediterranean, returned to England by leave of the Admiralty for the recovery of his health, leaving the fleet under the command of the next flag officer in seniority, but having before his departure dispatched one of the fleet on a cruise, which made captures within the limits of the station, after the departure homewards of such commander-in-chief out of those limits, but before any new orders given by the next flag officer, on whom the command of the station had devolved, *Held*, that the right to the flag share in such prizes belonged to the then present acting flag officer in command on the station, and not to the chief flag officer returning home, although the latter still retained the title, pay, and table-money of commander-in-chief after his return home, did not resign his commission as such until after the prize was taken, had an official correspondence with the Admiralty in that character till his resignation, and made appointments in the fleet as such; the governing principle of his Majesty's proclamation being, that the reward of prize should be attached to the present effective commander on the station, and not to the nominal one returning home, leaving ships behind to act under another command. *Nelson (Lord) v. Tucker (in error)*, 4 East, 238., 3 B. & P. 257.

29. The commencement of a commander-in-chief's departure from the local station of his command for the purpose of returning home, leaving his fleet behind, *i. e.* leaving it, for all effective purposes, under the control of another commander, competent under the terms of the prize proclamation of 1797 to command in his stead, is a "returning home" within the meaning

of that proclamation. *Ibid.* 4 East, 238.; *Lord Keith v. Pringle*, *Ibid.* 261.

30. A flag officer on a certain station having given orders to B., a ship under his command, to sail on a cruise, after the orders were given, but before a prize was taken, accepted another command, but no other flag officer was appointed to succeed him in his former station. *Held*, that he was not entitled to the flag share in a prize taken by B. on such cruise. *Johnston v. Margetson*, 1 H. Black. 262.

31. A., an admiral, appointed to the command of an expedition, was instructed to put himself and his fleet under the command of B., the admiral commanding the station, and accordingly put himself and his fleet under such command, and was directed by B., whilst he remained with him, to consider himself under his command, and to attend to all orders and signals whilst the fleets were on the same station; B. likewise did several acts forwarding the objects of the expedition, and issued orders relating thereto, but in consequence of ill health left the station and sailed for England with the ships under his command, and, at the time when the enemy's fleet agreed to surrender, was out of sight and not in a situation to have afforded the least assistance, and the enemy's fleet surrendered the day after he sailed. *Held*, that A., and not B., was entitled to the flag share in the prizes as commander-in-chief of the expedition at the time of the capture. *Duncan (Lord) v. Mitchell*, 4 M. & S. 105.

32. An inferior flag officer succeeding by devolution to the principal command, upon the return home of his superior flag officer, a commander-in-chief on a foreign

station, is entitled under the King's proclamation to the chief flag officer's flag share of a prize taken within the limits of the station, but after the superior flag officer had passed such limits on his return home, by a squadron which had been detached from the main body (with which such inferior flag officer remained) by the superior flag officer before his return home; notwithstanding that he had before his departure directed the inferior flag officer to take under his command those ships, by name, which continued with him at the principal station, and the detached squadron only when they returned to the same place after the particular service performed, and for the performance of which he had before limited a time; and that such superior flag officer's commission was stated to be to command in chief a squadron upon a particular service, and not merely upon a particular station; and notwithstanding also, that such superior flag officer did not resign his commission of commander-in-chief till after his return home, and after the prize was taken. At any rate, the superior is not entitled to recover such share of prize from the inferior flag officer, who had received it. *Keith (Lord) v. Pringle*, 4 East, 262.

#### 5. *Of an Admiral of an allied force.*

33. If the fleet of an ally and a British fleet serve together under a British commander-in-chief, who detaches the squadron of the ally, the Admiral of the auxiliary power is not entitled as a flag officer to share in prizes made by British ships detached in another direction, to which he lent no actual co-operation in effecting the capture. *Duckworth v. Tucker*, 2 Taunt. 7.

## FOREIGNERS.

1. A British subject cannot set up a demand in a British Prize Court, though a Court of the Law of Nations, for an interest which he cannot sustain without showing himself to have acquired it in violation of the municipal laws of this country; but the same principle is not to be applied to foreigners. *The Recovery, Webb*, 6 C. Rob. 348.

2. In a Court of the Law of Nations the act 26 Geo. 3. c. 60., requiring the name of every owner to appear in the ship's register,

and the established rule confining the claims of third parties, if British subjects, to registered owners, *Held* binding on British subjects only, and not to bar foreigners from preferring a claim against a *bona fide* owner whose name was not inserted in the ship's register. A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of the vessel, but whose name was not inserted in the ship's register, bill of sale, or letters of

marque, *Held* to have been a *bonâ fide* owner, and responsible as such to a foreigner. The representative of such owner accordingly held responsible for costs and damages decreed to the foreigner. *The Nostra Senhora de los Dolores, Morales*, 1 Dodson, 296. 298.

3. No British act of parliament or commission founded on it, if inconsistent with the Law of Nations, can affect the rights or interest of foreigners. *Le Louis, Forest*, 2 Dodson, 238.

4. Where both the parties in a suit are foreigners, the important consideration which regulates the jurisdiction of the Court is, whether the case be *communis juris* or not. *The Johann Friederich*, 1 W. Rob. 38.

5. A foreign sovereign is entitled to sue in the Courts of Law or Equity in this country. *Hallett v. King of Spain*, 1 Dow. N. S. 169.; S. C. 2 Bli. N. S. 31., 1 Clark & Fin. 333.

6. The Court will not take notice of a foreign state not acknowledged by the Government of this country. *City of Berne v. Bank of England*, 9 Ves. 347.

7. The Crown has a right to the custody of the property of a foreigner deceased until a better title to it can be shown. *Aspinwall v. Queen's Proctor*, 2 Curteis, 246.

8. By 7 Geo. 1. c. 21. s. 2. all contracts and agreements whatsoever made by any of his Majesty's subjects, or any person for them, for or upon the loan of any monies by way of bottomry on ships in the service

of foreigners, and bound or designed to trade to the East Indies, all contracts between such parties for supplying any such ships with cargoes, goods, stores, or other effects, all co-partnerships and agreements in the nature thereof relative to such voyages and the profits thereof, and all agreements for wages of persons on board such ships, and engaged in such voyages, are declared void.

9. The Court of Admiralty will not hold a foreigner so strictly to the observance of the technical forms of its proceedings as a British suitor, as the latter is more competent to form an opinion of what ought to be done, and has greater facilities of acquiring the necessary information. In a proceeding by act on petition objections to the rejoinder given on behalf of the foreigner, as containing irrelevant matter, overruled, though parts of the plea were irrelevant and manifestly superfluous. *The Anne and Jane, Boyce*, 2 W. Rob. 106.

See ALIENS, CLAIMANTS,  
NATIONAL CHARACTER, NEU-  
TRALS.

*As to Foreign Law* — see  
EVIDENCE.

*As to Security for Costs by*  
— see SECURITY FOR COSTS.

*As to Foreign Mariners*  
— see MARINERS.

*Of the Navigation Laws as*  
to — see NAVIGATION LAWS.

*Of the Title of — to Ships*  
— see TITLE.

## FRAUD.

1. A very strong case is necessary to induce the Court to determine a person guilty of fraud when that person is absent and has no opportunity of being heard in his defence. *The Warrior, Peache*, 2 Dodson, 291.

2. Clandestinity is a strong indication of fraud. *Bridges v. King*, 1 Hagg. (Eccl.) 310.; *Ingram v. Wyatt*, *Ibid.* 384.

3. In a concerted account of a fraudulent transaction, the most striking contradictions may be expected on the minor details or collateral facts, rather than on the leading circumstances. *Bridges v. King*, 1 Hagg. (Eccl.) 301.

4. The Court might, within the limits of the very extended equity which it is in the

habit of exercising, suffer a cause to be reopened, on a direct case of fraud, or something equivalent to it, being made out, but mere negligence or oversight would not be a sufficient ground for such an application. *The Fortitude, Henrickson*, 2 Dodson, 70.

5. Where fraud is charged, the Court allows a greater latitude of pleading than in ordinary cases. *Marsh v. Tyrrell and Harding*, 1 Hagg. (Eccl.) 133.

*In cases of Joint-Capture*  
— see JOINT-CAPTURE.

*In cases of Licence* — see  
LICENCE.

*In cases of Prize* — see  
FURTHER PROOF, PRIZE.

## FREIGHT.\*

- I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO — 164.
- II. OF PROCEEDINGS TO BRING FREIGHT INTO THE REGISTRY OF THE COURT OF ADMIRALTY, 165.
- III. OF THE RIGHT TO — 165.
  1. *Generally*, 165.
  2. *In cases of partial performance of the contract of affreightment*, 166.
  3. *Where the completion of the contract of affreightment is prevented*, 167.
    - (a) *By the fault or incapacity of the ship*, 167.
    - (b) *By the fault or incapacity of the cargo*, 167.
    - (c) *By the fault or incapacity of both ship and cargo*, 168.
    - (d) *By capture*, 168.
  4. *Where the contract is in substance performed — et contra*, 168.
  5. *Where the completion of the contract is interrupted but ultimately effected*, 168.
  6. *Where the completion of the contract is effected by transshipment of cargo*, 168.
  7. *Miscellanea*, 168.
- IV. OF THE RIGHT OF PARTIES TO — 168.
  1. *The Crown*, 168.

2. *Captors*, 168.
3. *Neutral shipowners*, 169.
  - (a) *Of the precedence of* — 169.
4. *Bottomry bondholders*, 169.
5. *Mortgagees*, 169.
- V. WHAT WILL BAR THE RIGHT TO — ET CONTRA, 170.
- VI. OF THE LIEN FOR — 170.
- VII. OF THE LIABILITY TO THE PAYMENT OF — 171.
- VIII. OF THE ASSIGNMENT OF — 171.
- IX. OF THE PAYMENT OF — 172.
  1. *Of the calculation of* — 172.
  2. *Of deductions from* — 172.
  3. *Of the sale of perishable cargo to defray* — 172.
  4. *Of the distribution of* — 172.
  5. *Practice with reference to* — 173.
    - (a) *As to making it a charge on the cargo*, 173.
    - (b) *As to time of application for* — 173.
- X. OF THE RIGHTS AND DUTIES OF MASTERS WITH REFERENCE TO — see MASTERS.
- XI. OF THE LIABILITY OF —
  1. *For losses or damage* — see OWNERS.
  2. *For salvage* — see SALVAGE (civil), SALVAGE (military).

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —†

1. The Court of Admiralty has jurisdiction over the question of freight claimed by a neutral master against the captor, who has taken the goods as a prize. *Smart v. Wolff*, 3 T. R. 323.

2. Where, therefore, a monition had issued, after the goods were condemned and decreed to the captors, at the suit of the master against the plaintiffs, as owners or agents of the prize-goods, to bring into Court the produce remaining in their hands to answer the freight, the Court of King's Bench refused a prohibition, though no fidejussory caution had been taken before the

goods were delivered to the captor, but the question of freight had been reserved by the terms of the decree for future consideration. *Ibid.*

3. The statute 3 & 4 Vict. c. 65., enabling the Court of Admiralty to adjudicate on the claims of mortgagees of ships, virtually confers on the Court the same power over the freights, or the funds in Court representing the freights. *The Donothorpe, Lofty*, 2 W. Rob. 80., 3 Notes of Cases, 623.

4. *Semble*, that the Court of Admiralty has no jurisdiction, either original or under the statute 3 & 4 Vict. c. 65., over freight *per se*, but has an equitable jurisdiction, independent of the statute, over the same in questions thereon arising collaterally in

\* See on this head *Abb. Sh.*, part iv. cap. 9.

† 1. With reference to freight, the authority of the Court of Admiralty, which is exercised on the ship and cargo in specie, or (which is in effect the same thing) on the proceeds of a sale made under its own decrees, is very different from that of a Court of Common Law. *Abb. Sh.* 455.

2. Courts of Admiralty, where the question of

freight comes before them collaterally, in the case of captured ships ordered to be restored, will exercise a larger equity than belongs to a Court of Law: without assuming to make a new contract between the parties, they presume their consent to such a contract as equitably belongs to a new state of things not originally within their contemplation. *Ibid.* 470.

suits within its acknowledged jurisdiction. *The Fortitude*, Douglas, Ibid. 217., 8 Jur. 23., 2 Notes of Cases, 515.

5. Where, therefore, a vessel was arrested at the suit of mariners for wages, but not the freight (which was not in the hands of the Court), the Court declined to exercise its ordinary jurisdiction or that conferred by the third section of 3 & 4 Vict. c. 65., at the instance of a mortgagee of the ship, to adjudicate questions as to the ownership of the freight. *Ibid.*

6. *Semble*, that a Dock Company are bound to bring into the Court of Admiralty a deposit to cover freight paid to them under the 3 & 4 W. 4. c. 57. s. 47. (*see post*, No. 68.) in pursuance of a monition from that Court at the suit of a bottomry bondholder seeking to make it available as in the nature of freight in discharge of his bond. Such a monition having issued to a Dock Company, to which they appeared, at first objecting to, but ultimately complying with, the directions of the monition, application to condemn them in costs in consequence of such objection in the first instance rejected, but the Court intimated that should the question be again raised it should visit the party failing with costs. *The Lord Auckland*, 2 W. Rob. 301., 8 Jur. 478.

## II. OF PROCEEDINGS TO BRING FREIGHT INTO THE REGISTRY OF THE COURT OF ADMIRALTY.

7. The Court must be satisfied that freight has actually been received before it will direct it to be brought in. *The Aline*, Stockelye, 1 W. Rob. 123.

8. The gross, not the nett, freight should

in the first instance be brought into the registry, reserving any question of deductions to be referred to the registrar and merchants. The nett freight only having been brought in, motion for the balance, making the gross freight not claimed for expenses to be brought into the registry, granted. *The Triune*, Wardell, 3 Hagg. 114.

## III. OF THE RIGHT TO —

### 1. Generally.\*

9. In the construction of contracts relating to freight, the Court as a general rule holds that it is not to be paid till the voyage has been completed, unless the parties stipulate for the payment in advance. *Andrew v. Moorhouse*, 5 Taunt. 435., 1 Marsh, 122.

10. As the right to freight does not commence until the ship has broken ground and begun the voyage, no partial payment can be claimed for goods laden on board, if, even without the fault of the master, the ship is prevented from actually setting forth on the voyage. *Curling v. Long*, 1 Bos. & Pull. 634., Abb. Sh. 463.

### 2. In cases of partial performance of the contract of affreightment.†

11. Where a charterparty contained no provision for any freight until the arrival of the vessel at her port of destination, the vessel being lost before its arrival, it was holden to be a condition precedent to the owner's right to freight. *Gibbon v. Mender* (1818), 2 B. & A. 17.

12. On condemnation of ship and cargo

\* 3. Freight is the payment made for the conveyance of merchandize to its destination. It denotes the price of carriage, not of receiving goods to be carried; and therefore, though a merchant may of course contract to pay a sum of money to a shipowner for taking goods on board, yet such payment is not, strictly speaking, freight; hence it follows that no freight becomes due unless the carriage of the goods be completely performed. *Smith's Merc. Law*, 283.

4. Although, by the policy of the law, freight does not become due until the voyage has been performed, it is competent to the parties to a charterparty to covenant by express stipulations in such manner as to control the general operation of law, viz. that a part of the freight should be paid absolutely by anticipation, and not depend on the performance of the voyage. *Abb. Sh.* 406.

5. As to the extent to which freight has been considered incident to the ship, see *Leslie v. Guthrie*,

1 Scott, 683., and *Stephenson v. Dowson*, 3 Beav. 342.

† 6. When the ship, by reason of any disaster, goes into a port short of the place of destination, and is unable to prosecute and complete the voyage, and the goods are there received by the merchant, the general rule of the ancient maritime law is, that freight shall be paid according to the proportion of the voyage performed *pro rata itineris peracti*. *Abb. Sh.* 434.

7. But with regard to proceedings in the Courts of Common Law of England, the right to freight *pro rata itineris* must arise out of some new contract between the master and the merchant, either expressly made by them or to be inferred from their conduct. *Ibid.* 448. 450.

8. A master bringing back goods, where prevented by unavoidable accidents to the ship from carrying them to their port of destination, may be entitled to some compensation from the owner of the goods. *Ibid.* 367. n.

freight refused to the claimants. *Semble*, on the ground that it had been agreed to be paid on the return of the ship, which having been captured on the outward voyage no freight money had been earned. *The Rebecca, McNeil*, 2 Acton, 119.

13. A ship employed by charterparty on both an outward and homeward voyage at so much per month, and which was lost in the homeward voyage, *Held* to have earned the freight due for the outward voyage. *Mackrell v. Simond*, 2 Chit. 666., Abb. Sh. 463.

14. Where a ship is wrecked the merchant is liable to freight *pro ratâ itineris*. *Lutwidge v. Grey* (Feb. 1733), Dom. Proc. cited in Abb. Sh. 438.

15. Freight, as between British subjects, is due where the master is prevented from bringing home the intended cargo by the embargo of a foreign state. *Blight v. Page* (1801), 3 B. & P. 295. n.

16. Freight *pro ratâ itineris* is not due to a ship on capture and recapture brought back to the port or quasi port of her departure; but *quære aliter*, if some considerable portion of the voyage was accomplished when she was captured and brought in. *The Hiram, Still*, 3 C. Rob. 180.; and *Luke v. Lyde*, cited therein.

17. Application for freight *pro ratâ itineris* on behalf of a British ship, which, on a voyage from Liverpool to Halifax and the West Indies, was captured by, and afterwards recaptured from, the enemy and brought into Plymouth, rejected. *Ibid.*

*See post*, Nos. 43, 45, 46.

### 3. Where the completion of the contract of affreightment is prevented.

#### (a) By the fault or incapacity of the ship.

18. A vessel, which had come into port to repair through stress of weather, was seized and required to prove her neutral character. Transshipment of the cargo became necessary before the ship was liberated. *Held* that the ship had failed in her contract of freight, not owing in any manner to the cargo, but to her own state of distress originally, and afterwards to her dubious character, and that therefore only a freight *pro ratâ itineris* was due. *The Copenhagen, Menig*, 1 C. Rob. 289.

19. Application on behalf of the owner of a ship which had been detained under an embargo but was afterwards restored, for freight on the cargo which, not being affected by the embargo, had been un-

loaded and sent on by another conveyance, refused. *The Werldsborgaren, Lagerholm*, 4 C. Rob. 17.

20. A Swedish ship under charterparty to go from Plymouth to Radstow, and there take in a cargo for Venice, proceeded to Radstow, took a cargo on board, but after a few days' sailing was driven by stress of weather into Falmouth, where she was detained under the Swedish embargo, the cargo, as the property of British merchants, being restored. No freight *held* to be due under the charterparty, and application for the same rejected accordingly. *The Isabella Jacobina, Sovergren*, *Ibid.* 77.

21. The owner of the ship has no right to freight but upon an entire execution of his contract with the cargo, or such an execution as he could effect consistently with the incapacities attaching on the cargo. Where the vessel itself is incapacitated no right of freight accrues to her owner. *The Fortuna, Koedt*, Edwards, 57.

22. No freight is due upon a cargo in a vessel recaptured from the enemy and, by reason of her disabled state, sold with the cargo at the nearest port under the authority of the Vice-consul of the place. *The Louisa, Higginbotham*, 1 Dodson, 319.

23. A cargo of rice shipped at Batavia was by the bill of lading to be delivered at Rotterdam to the plaintiff, he paying freight for the same. The vessel having encountered a hurricane was compelled to put into the Mauritius, where the rice having been found to be damaged and in a state of rapid putrefaction, was of necessity sold by the master, who acted *bonâ fide*, but without the knowledge of either the shipper or shipowner. *Held*, that under the circumstances no freight was due either for the whole voyage or *pro ratâ itineris*. *Vlierboom v. Chapman*, 13 M. & W. 230.

*See post*, No. 26.

#### (b) By the fault or incapacity of the cargo.

24. A vessel having been seized coming out of a blockaded port, and restored as protected by a licence, but further proof as to cargo ordered, application for freight and expenses of the ship to be a charge on the cargo granted. *The Juno, Beard*, 2 C. Rob. 124.

25. It is the practice of the British Court of Admiralty to allow freight to neutral vessels where the cargo is condemned as enemy property. *The Atlas, Kimbell*, 3 C. Rob. 304. n.

26. Where a neutral vessel is brought in on account of the cargo, the ship is discharged with full freight, because no blame attaches to her; but where the ship is the subject of detention, and not the cargo, which might go on, the owner of the vessel has no right to freight, still less the captor or the Crown claiming through him. *The Fortuna, Koedt, Edwards, 57.*

27. Where neutral and innocent masters are brought into England on account of their cargoes, and obliged to unliver them, they shall have their freight, upon the principle that the non-execution of the contract, arising from the incapacity of the cargo to proceed, ought not to operate to the disadvantage of the ship. *The Prosper, Cloassen, and The Holstein, Jobs, Edwards, 72.*

28. An American ship was retaken from the French and restored with part of cargo, which, however, was unlivered with the rest of the cargo, which was also, three months afterwards, restored before the ship had sailed. A demand was made on the master to take the cargo on board, which he refused, and proceeded on his original voyage. Whole freight decreed notwithstanding to be a charge on the cargo. *The Martha, Martin, note to The Racehorse, White, 3 C. Rob. 106.*

29. A capture took place on the 18th of August; on the 1st of September restitution of the ship was decreed, and a commission of unlivery was taken out by the captor on the same day. It was not completely executed till the 26th of September. On the 25th, before the whole cargo was unlivered, notice was given to the master, on behalf of the cargo, that he would be required to go on: *Held*, that at the moment of separation the vessel acquired a right to proceed, without waiting for the restitution of the cargo; that the act of unlivery was binding on the parties, and must be taken to be decisive in producing a complete dissolution of the contract. The freight, therefore, was decreed to be a charge on the cargo which was ultimately restored. *The Hoffnung, Rask, 6 C. Rob. 231.*

*See post, No. 82.*

(c) *By the fault or incapacity of both ship and cargo.*

30. Where the incapacity to perform the

voyage fell upon both ship and cargo a moiety of the freight was, under the circumstances, decreed. *The Friends, Creighton, Edwards, 246.*

(d) *By capture.*

31. The captor of a neutral vessel having enemy's goods pays the whole freight, though it has not been earned by the completion of the voyage, because he represents the enemy by possessing himself of the enemy's goods *jure belli*. *The Copenhagen, Menig, 1 C. Rob. 291.*

32. The maxim that *capture is delivery*, and therefore freight is earned, is true only where the captor succeeds fully to the rights of the enemy, and represents him as to those rights. *Ibid. 289.*

*See ante, No. 12., and post, Nos. 35, 36, 37., and Note 9.*

4. *Where the contract is in substance performed — et contra.*

33. A British ship freighted from Liverpool in ballast to Lisbon, to bring a cargo of fruit to Ireland, and on her return voyage taken by the French and afterwards recaptured and brought into Falmouth, allowed whole freight on the cargo; one-eighth freight permitted to be deducted for salvage paid thereon by owners of cargo. *The Racehorse, White, 3 C. Rob. 101.*

34. If a ship have merely arrived at a port of the country of her destination, not her delivering port, she has not earned freight. Vessel directed to proceed to the port of delivery. *The Wilhelmina Eleonora, Mohr, Ibid. 234.*

35. Freight upon goods going to Portugal, but seized in this country, and detained under an embargo, and afterwards condemned to the Crown, pronounced not to be due, as not having been brought to the original port of destination, though ultimately sold by the claimants in this country. *The Fortuna, Koedt, Edwards, 56.*

*See post, No. 45.*

5. *Where the completion of the contract is interrupted but ultimately effected.\**

36. Where a ship is recaptured, and reaches her port of destination, freight is

\* 9. An interruption of the regular course of the voyage, happening without the fault of the owner, does not deprive him of his freight if the

ship afterwards proceed with the cargo to the place of destination, as in the case of capture and recapture. *Abb. Sh. 406.*

payable. *Bergstrom v. Mills* (1789), 3 Esp. 37.

37. A ship, let to freight by the month, in attempting to enter a blockaded port by order of the freighters, was seized, and her cargo condemned, but, being afterwards released, took in other goods and delivered them to the freighters, according to the charterparty, *Held* that there was no suspension of the freight during the detention of the ship. *Moorsom v. Greaves*, 2 Cowp. 627. (Ellenborough.)

6. *Where the completion of the contract is effected by transhipment of cargo.\**

38. The master is at liberty to procure another ship to transport the goods to their destination, and will be entitled to the full consideration for which the original contract was entered into; and *semble*, if circumstances render it necessary that another ship be procured, and it can only be obtained at a higher rate of freight, the owner would be bound by the act of his agent, and liable for the increased freight. The jury being the proper tribunal to decide as to the propriety of the measure, the Court would not disturb their finding. *Shipton v. Thornton*, 1 P. & D. 216.

7. *Miscellanea.*

39. Freight upon a cargo in a ship recaptured from the enemy, and condemned as having been set forth for war, decreed to the recaptors for a voyage from the Bermudas, where the vessel had in the first instance been carried, and from whence it was sent on to London, with the consent of parties, and under the sanction of the Court. *The Georgiana, Pitts*, 1 Dodson, 403.

40. The sentence of a Vice-Admiralty Court having condemned a ship, "with her tackle, freight, &c.," and the Court of Appeal having pronounced against this sentence, and decreed restitution of the ship, *Held* that the sentence of restitution should be construed to have comprised the several appendages of the ship condemned specifically in the Court below. Freight decreed to be restored accordingly. *The Jennet, Coursell*, 1 Acton, 332.

IV. OF THE RIGHTS OF PARTIES TO —

1. *The Crown.*

41. Where neutral vessels were brought in on account of their cargoes, and compelled to unliver them, and freights were held due to them, but by an embargo the vessels were seized preparatory to hostilities against the country to which they belonged, *Held* that these freights went to the Crown, as succeeding to the rights of the shipowners, though such freights had not been decreed prior to the intervention of hostilities. *The Prosper, Cloassen*, and *The Holstein, Jobs, Edwards*, 72.

*See ante*, Nos. 26. 35.

2. *Captors.*

42. The captor, who has performed the contract of the vessel, is, as a matter of right, entitled to freight, although, if he have done any thing to the injury of the property or have been guilty of any misconduct, he may remain answerable for the effect of such misconduct or injury in the way of a set-off against him. *The Fortuna, Tadsen*, 4 C. Rob. 278.

43. On the subject of freight due to captors, there are two rules equally general. The first is, that if goods are not carried to their original destination within the intent of the contracting parties, freight shall not be due to the captor; for the contract not being completed, either in substance or form, the speculation of the party has not been productive. The second rule is, that when the contract is executed by bringing the cargo to the place of destination, the captor to whom the vessel is condemned shall be entitled to the freight which he has earned. *The Diana, Runke*, 5 C. Rob. 67.

44. Under neither of these rules does the Court go into minute enquiries of the facts relative to profit or loss to the shipper, but takes the presumption arising from destination only, and founds upon it the general rules to which it adheres. *Ibid.*

45. There may, however, be a third and distinct class of cases, founded on peculiar circumstances, and requiring a rule not strictly applicable, on the same precise ground, to either of the other two. As where the claimants were British merchants, who, having elected England as the

\* 10. Where the ship is prevented by any accident from completing her voyage, the master may, if he can and will do so, hire another ship to convey

the goods, and so entitle himself to his whole freight. *Ibid.* 434.



most eligible country for their importation, were subsequently compelled by the policy of Holland to change the destination for that country, though with the final intention to have the goods remitted either in specie or in proceeds to England, as the country to which they would have consigned them if at liberty so to do. The Court considered that this fact formed a material fundamental basis for a rule proper to be applied to such cases, not because the result, in coming to England, may have been more beneficial to the parties (for that the Court does not consider, it leading into too many minutiae), but because the intention of the parties, as they had themselves stated it, had been substantially fulfilled, and the goods were restored to them in their own country, and under their own eye. Freight in such a case pronounced for accordingly. On the claim of one of the parties, an objection to payment of freight, on the ground that the goods were unliveried at Plymouth, and not brought to London, the claimant's own port, overruled, and freight decreed on the goods included under that claim also. *Ibid.*

46. It is a general rule, founded on very ancient principles of law, that whenever the captor brings the goods to the port of actual destination, he shall be entitled to the freight, on the ground that the contract has been fulfilled; but that in all other cases freight shall not be due, though the ship may have performed a very large part of her intended voyage. Application of captors for freight, on the suggestion of a beneficial and privileged sale in this country, the port of destination being Amsterdam, refused. *The Vrow Anna Catharina, Mahts*, 6 C. Rob. 269.

*See antè, No. 26., and post, No. 49.*

### 3. Neutral shipowners.

47. Neutral carriers are entitled to their full freight to their port of destination, even on enemy's goods, unless guilty of prevarication or falsehood in their evidence. *The Anna Christiana*, Hay & Marriott, 163.

48. It is the practice of the High Court of Admiralty to allow, with certain exceptions, freight to neutral vessels where the cargo is condemned as enemy property. *The Atlas, Kimbell*, 3 C. Rob. 304. n.

*See antè, Note 2., Nos. 24. to 30., and post, Nos. 53. to 64. 70, 71. 89.*

### (a) Of the precedence of —

49. A neutral may carry the property of the enemy, subject to its capture and the temporary detention of his vessel, and if he conduct himself with good faith, he is entitled to freight, and in respect thereof, to a lien on cargo, taking precedence of captor's expenses. Where, however, the trade is between ports of allied enemies, captors are entitled to a lien on cargo for their expenses, taking precedence of neutral masters for freight. Trade between ports of two belligerents is a kind of middle case. In such a case, the proceeds of cargo being insufficient to meet both claims, captor's law expenses directed to take precedence of freight, to which, however, the other expenses of the captor were postponed. *The Vrow Henrica, Hilck*, 4 C. Rob. 343.

### 4. Bottomry bondholders.

50. Part of a cargo having been sold to defray the expenses of the ship in a foreign port, under a decree of the Court of that place, the owners of the cargo held (overruling the report of the registrar and merchants) not to be entitled to withhold the freight on such part of the cargo as had been sold from the holder of a bottomry bond on ship and freight, the ship having been put to such expenses by the delay of the owners of the cargo. But *quære*, would the owners of cargo have been entitled to do so had they not occasioned such expenses? Payment of primage and gratification-money pursuant to the agreement decreed to the master out of the surplus, after satisfaction of the bottomry bond. *The Angerona, Marks*, 1 Dodson, 382.

*See antè, No. 6.*

*Of the liability of freight in cases of bottomry — see BOTTOMRY, cap. XVIII. sect. 3.*

### 5. Mortgagees.

51. It was formerly held that the mortgagee of a ship could not sue in his own name for the freight accruing after the mortgage and before he took possession. *Chinnery v. Blackman*, 3 Dougl. 391.; S. C. nom. *Chinnery v. Blackburne*, 1 H. Black. 117. n.; and see *Briggs v. Wilkinson*, 9 D. & R. 871., 7 B & C. 30.

52. By the mortgage of a ship, accruing freight passes to the mortgagee as incident

to the ship, notwithstanding 6 *Geo.* 4. c. 110. s. 45., which enacted that the mortgagee should not be deemed owner except for the purpose of making a transfer. *Dean v. M'Ghee*, 4 Bing. 45., 12 Moore, 185., 2 Car. & P. 387.; *S. P. Kersevell v. Bishop*, 2 C. & J. 529., 2 Tyr. 602.

*See ante*, No. 5.

#### V. WHAT WILL BAR THE RIGHT TO — ET CONTRA.

53. Freight being the reward which the law entitles a person to recover for bringing goods lawfully upon a legal voyage, if the voyage be illegal by reason of any cause, freight cannot be recovered. *Muller v. Gernon* (1811), 3 Taunt. 394.

54. Neutral shipowners are not entitled to freight on cargoes condemned in cases of unneutral conduct, colonial trade, coasting trade, contraband, trade between the ports of allied enemies with false papers, spoliation of papers, &c. *The Atlas, Kimbell*, 3 C. Rob. 304. n.

55. A neutral shipowner is not entitled to freight earned in the coasting trade of the enemy (supposing such trade not to be usually open to foreign vessels). *The Emanuel, Soderstrom*, 1 C. Rob. 296.

56. Freight refused to a neutral on a cargo between the colonies and mother country of the enemy. *The Rebecca, Moore*, 2 C. Rob. 101.

57. Freight and expenses given to a neutral vessel trading from the port of one enemy to that of another, no fraudulent proceedings appearing in the conduct of the ship. *The Wilhelmina, Carlson*, note to *The Rebecca, Moore*, *Ibid*.

58. Freight and expenses refused to a neutral master on a cargo going from one port of Spain (an enemy) to the other, notwithstanding a suggestion that such a trade was not denied by Spain to neutrals during peace. *The Allegoria*, note to *The Conventientia, Peterson*, 4 C. Rob. 202.

59. A neutral ship sailed with a cargo from an enemy port for a neutral port, at which she stopped only three days for fresh papers, and without unloading any part of her cargo, which purported in such papers to have been there laden, then proceeded to another port of the same enemy, on which voyage she was captured: such a trading having been held a continuous voyage in the coasting trade of the enemy, notwithstanding the colourable interposition of the neutral port, and the cargo condemned as prize accordingly (the ship

having been previously restored by consent), application to pronounce against the claim of freight and expenses rejected, on the ground that it was possible that the owner of the ship might not have been cognisant of the intention under which the original destination was continued. Freight and expenses given accordingly. *The Ebenezer, Christensen*, 6 C. Rob. 256.

60. Freight and expenses refused upon goods condemned as not enumerated in the licence permitting the importation of the cargo. *The Jonge Clara, Stevens*, Edwards, 374.

61. Spoliation of papers by the master held to bar the owner's claim for freight. *The Rising Sun, Wilkie*, 2 C. Rob. 108.

62. It is a rule that if a ship be going with false papers, the owner shall lose his freight, though there might be cases in which, if an owner were to show that he had been duped by the fraud of the master, the Court might relax the rule in spite of the considerations of utility and necessity by which it is sustained. Application for freight on grounds not meeting the requisites to found such an exception, refused. *The America, Sherborne*, 3 C. Rob. 36.

63. A neutral master cannot aver ignorance of the contents of his cargo. Sailcloth described as linen, and directed not to be opened by the master, having been condemned as contraband, freight thereon refused. *The Oster Risoe, Jurgenson*, 4 C. Rob. 199.

*With reference to the forfeiture of freight by reason of carriage of contraband — see CONTRABAND, cap. IV. sec. 4.*

64. An Order of Council, permitting the consignee of goods coming from an enemy's country without a licence to land them here, on condition of immediately re-exporting them, does not so legalise the voyage as to enable the master of a ship to recover his freight. *Muller v. Gernon*, 3 Taunt. 394.

#### VI. OF THE LIEN FOR —

65. Freight is in all ordinary cases a lien which is to take precedence of all others. *The Vrow Henrica, Hilch*, 4 C. Rob. 347.

66. Where a ship sailed in ballast from L. to J., and was sold on her voyage there, and afterwards sailed from J. to L. with cargo, on contract with the owners of the ship at the time of sailing, the creditors of the former owners have no lien on the

freight due in respect of the voyage from J. *Exp. Hill*, 1 Mad. 61.

67. The master being turned out of possession upon the vessel being captured does not deprive him of his lien for the freight in case of her recapture. *Exp. Cheesman*, 2 Eden. 181.

68. By the 3 & 4 W. 4. c. 57. s. 47., all goods or merchandise which shall be landed in docks, and lodged in the custody of the proprietors of such docks under this act, not being goods forfeited to his Majesty, shall, when so landed, continue liable to the same claim for freight in favour of the master or owners, or others entitled thereto, as they were liable to when on board ship, and prior to such landing, and the proprietors of such docks or their agents are authorized, on due notice by such parties, to detain such goods in their warehouses until the freight and charges thereon shall be duly paid, or until a deposit shall have been made by the owners or consignees of such goods equal in amount to the claims for such freight, which deposit the proprietors of such docks or their agents are authorized to hold in trust until the claims for freight on such goods shall have been satisfied, on proof of which and the payment of the charges on the goods, the deposit shall be returned to the depositors.

*See antè*, Nos. 6. 49.

#### VII. OF THE LIABILITY TO THE PAYMENT OF — \*

69. A. purchased a cargo, brought in a Danish vessel, of the consignee, free of all expenses. An embargo on all Danish vessels followed, the effect of which was considered to discharge the master's lien for freight on the goods. The purchaser had obtained possession of the cargo under an order of Court: *Held*, that the master must look to the personal security of the freighters, and not to the purchaser, who took the goods discharged of the lien.† *The Theresa Bonita, De Jong*, 4 C. Rob. 236.

70. Where a capture is made of a cargo, the property of an enemy carried in a neutral ship, the neutral shipowner ob-

tains against the captor those rights which he had against the enemy. *The Emanuel, Soderstrom*, 1 C. Rob. 296.; *The Bremen Flugge, Meyer*, 4 C. Rob. 91.

71. In a case of restitution of ship and cargo, on further proof, with freight decreed to be a charge on cargo, the proceeds of cargo being insufficient to pay the freight, application that the captor might be decreed to pay the balance of freight, and to account for the value of the cargo, rejected. Proceeds decreed to be paid out to the neutral master in part satisfaction of freight, the Court intimating that any further demands he might have must be prosecuted against the consignee. *The Haabet, Hohorst*, *Ibid.* 302.

72. The Crown or the captor is not to regard latent remote claims of third parties arising on foreign transactions, such as bottomry, &c., but it takes *cum onere*, though not *cum onere universali*, and, succeeding by capture to the rights of the owners of ship and cargo, succeeds also to the obligations of those parties against each other, arising out of the immediate transaction. *The Constantia Harlessen, Knudson*, Edwards, 232.

73. Freight, which would have been due on the cargo had it been delivered pursuant to the charterparty, decreed to be paid by captors. *The Catharina Elizabeth, Sjoebeck*, 1 Acton, 309.

74. A ship arrived at Naples with a cargo which was seized by the government, and the master was in consequence prevented from delivering it to the consignee of the merchant, *Held* that the merchant was not liable to pay the outward freight. *Storer v. Gordon and others*, 3 M. & S. 308., Abb. Sh. 469.

75. Where a prize-ship, afterwards decreed to be restored with freight, was lost by the negligence of the prize-master, the whole freight was decreed against the captor, and not limited to the proceeds of the cargo saved. *The Der Mohr, Helmer*, 4 C. Rob. 314.

*See antè*, Nos. 31, 32. 38.

#### VIII. OF THE ASSIGNMENT OF —

76. A ship's broker cannot assign the

\* 11. Whether damaged goods are exempt from freight, or may be abandoned for it, see *Abb. Sh.* 427.

† 12. It has, however, since been decided that, although there be no original privity of contract between the purchasers from consignees and the owner, yet the taking of goods by purchasers under

a bill of lading is evidence of a new agreement by them as the ultimate appointees of the shippers, to pay the freight for the carriage of the goods, the delivery being stipulated with the shippers to be made to the consignees named in the bill of lading or their assigns, he or they paying freight for the same. *Ibid.* 422.

freight of a part-owner without his direct authority and concurrence, though he be a creditor against all the owners of the vessel for money advanced for the service of the ship. *The Douthorpe, Lofty*, 2 W. Rob. 87., 3 Notes of Cases, 623.

77. Assignment of freight alone is not within the Ship Registry Acts. *Mestaer v. Gillespie*, 11 Ves. jun. 636.

#### IX. OF THE PAYMENT OF —

##### 1. *Of the calculation of —*

78. On compensation in value for a ship and cargo, an allowance of ten per cent. on the invoice price of cargo being no more than a fair mercantile profit thereon, the charge for freight in addition is allowable, though the ship and cargo are the property of the same owner. *The Lucy, Treadwell*, 3 C. Rob. 208.

79. The charterparty is not the measure by which the captor in all cases is bound as to freight, even where no fraud is imputed to the contract itself. When, by the events of the war, navigation is rendered so hazardous as to raise the price of freight to an extraordinary height, captors are not necessarily bound to that inflated rate. When a ship is carrying on an ordinary trade the charterparty is undoubtedly the rule of valuation, unless impeached: the captor puts himself in the place of the owner of the cargo, and takes it with that specific lien. But a very different rule is to be applied when the trade is subjected to extraordinary risk and hazard, from its connection with the events of war and the redoubled activity and zeal of the enemy's cruisers. *The Twilling Riget, Metz*, 5 C. Rob. 82.

80. Report of registrar and merchants as to freight objected to on the ground of the calculation of the tonnage having been made at the shipbuilder's admeasurement only, and without reference to the mode in which freight was calculated in the East India trade (in which the ship was engaged), viz. either by weight or bulk promiscuously, referred back for reconsideration, and afterwards amended. *Ibid.*, and see 88. n.

81. Where a ship is freighted by the month, the months are calendar, not lunar. *Jolly v. Young*, 1 Esp. 186. (Kenyon.)

##### 2. *Of deductions from —*

82. The ship, on restitution, is not to stay and wait the result of proceedings on

the cargo, but a reasonable time is to be allowed in the way of accommodation, otherwise a proportion of freight may be deducted. *The Racehorse, White*, 3 C. Rob. 105.

83. On a decree for allowance of freight and expenses to a neutral claimant on condemnation of ship and cargo, objection to report of registrar and merchants, for deducting (the freight having been paid by Government) so much time from the date of the detention of the vessel as would have been required to have enabled the vessel to reach her original port of destination, overruled. *Quere*, the allowance of 2s. each a-day to master and mate, 1s. each to crew, and 10s. per ton per month demurrage, an adequate rate of allowance between claimant and captor. [*The Anna Catharina, Laurel*, 6 C. Rob. 10.

84. In the case of freight decreed to the Crown, the claim of the owners of the cargo to deduct from it moneys advanced to the master for repairs, and which proved to be an advance of freight and not average, admitted. *The Constantia Harlessen, Knudson*, Edwards, 232.

85. In a case of restitution, in which freight had been pronounced due to the captors, application for a deduction therefrom on the ground of damage to the cargo by improper stowage refused, it appearing that no objection had been made at the time of delivery; and further application to admit further proof as to the exact time of making the objection refused on the ground of culpable neglect and delay on the part of the claimants. *The Santo Thomas, Castello*, 2 Acton, 86.

See *antè*, Nos. 11. to 15.

30. 33.

##### 3. *Of the sale of perishable cargo to defray —*

86. In cases of restitution on freight decreed to be a charge on cargo, in which the cargo is of a perishable nature, application may be made to the Court at the time to decree the sale of so much cargo as may be necessary to discharge the freight. *The Vrow Margaretha*, 4 C. Rob. 304.

87. Such an application in such a case granted. *The Clarissa*, *Ibid.* 304. n.

##### 4. *Of the distribution of.*

88. By 59 Geo. 3. c. 25., all freight to be paid for the conveyance on board his Majesty's ships of gold, silver, or other

valuable articles shall be divided in the manner directed by proclamation.\*

5. Practice with reference to —

(a) As to making it a charge on the cargo.

89. In former wars the master, who was the general claimant for himself and every body concerned, used in cases of further proof and otherwise to be condemned in the expenses, which he was left to recover of the freighters, a remedy so precarious that, to preserve the interest of neutral carriers, the practice was altered to decreeing his freight and expenses as an average

charge on the cargo, the captain paying his share in cases of condemnation, and the claimant his share in cases of restitution of the whole or part of the cargo. *The Jungfre Maria*, Hay & Marriott, 273.

(b) As to time of application for —

90. Objection to application for freight after decree of restitution of proceeds of cargo, but before the proceeds had been delivered out of the registry, overruled. *The Fortuna*, Tadsen, 4 C. Rob. 278.

See *antè*, No. 85.

FURTHER PROOF.

I. OF THE REQUISITES OF —

II. WHERE THE COURT MAY REQUIRE —

III. WHERE REQUIRED — ET CONTRA.

IV. HOW FAR RE-OPENING THE CAUSE.

V. WHERE ALLOWED — ET CONTRA.

1. To neutrals generally.
2. To verify the ship's papers.
3. To disprove the depositions and ship's papers.

4. In cases disclosing fraud, mala fides, or suspicious circumstances.

5. In cases of purchase from the enemy.

6. In cases of false destination.

7. In cases of spoliation of papers.

8. Where there was delay in exhibiting —

9. A second time.

10. Other cases.

I. OF THE REQUISITES OF —

1. The old practice with regard to further proof was to set forth the same by plea and proof, but latterly affidavits have been admitted in lieu thereof by consent. *The Concordia Affinitatis*, Hay & Marriott, 289.

2. Whenever further proof is allowed to claimants their affidavits brought in by virtue thereof must be without equivocality, they must set forth the ownership of the cargo, where laden, taken, and landed, and they must be negative as well as affirmative, i.e. that the owners are not enemies of the captors. *Ibid.* 294.

3. Plea and proof is an awakening thing. It admonishes the parties of the difficulties of their situation, and calls for all the proof their case can supply. When it is ordered all proofs of a secondary nature must fail

to give that satisfaction which the Court is entitled to demand. *The Magnus, Sorensen*, 1 C. Rob. 33.; *The Bernon, Dunn*, *Ibid.* 105.

4. In claims by neutrals, open to much doubt, orders and the mode of payment are necessary points of proof. *The Magnus, Sorensen*, 1 C. Rob. 34.

II. WHERE THE COURT MAY REQUIRE —†

5. A King's ship having seized a pretended neutral vessel, the commander examined her papers and found among them a letter disclosing an enemy interest in ship and cargo, which paper he forwarded officially to the King's proctor, but permitted the vessel to proceed. She was afterwards again captured and brought in for adjudication, when the letter was tendered by the captors as evidence, and the

\* See this proclamation in the Appendix.

† 1. See the 24th sect. of 55 Geo. 3. c. 160. (the latest Prize Act, which, however, expired with the last war), authorizing Judges of Courts of Admi-

ralty to direct further proof in prize proceedings where it shall appear doubtful from the papers and depositions in preparatory, whether the capture be lawful prize or not.

admissibility thereof opposed on the ground of its not having been found on board the prize in question or any other captured ship (to which the Prize Act limited the evidence of papers in the first instance), and that the ship's papers were sufficiently verified to preclude an order for further proof. *Held*, that the provisions of the Prize Act, "if any doubts arise the Court may direct further proof," do not limit the cause of doubt to evidence actually on board, and that the Court is not absolutely concluded by the evidence, but is at liberty to have doubts extrinsic of the evidence. Further proof decreed accordingly to admit of the captor's bringing in and duly verifying such letter, and condemnation on further proof, no explanation of such letter being offered. *The Romeo, Corran*, 6 C. Rob. 351.

### III. WHERE REQUIRED — ET CONTRA.

6. Further proof ordered in cases where the claims were not verified by the master or the ship's papers. *The Jeane Isabelle*, Hay & Marriott, 186.; *The Hoppet*, Ibid. 217.; *The Vrow Margaretha*, Ibid. 219.; *The Jonge Guiliam*, Ibid. 220.; *The Juffrow Anna, Gedtruth*, Ibid. 221.; *The Kronta, Ancharet*, Ibid. 258.; *The Concordia, Sophia*, Ibid. 267.; *The Drie Gebroeders*, Ibid. 271.; *The Jungfre Maria*, Ibid. 273.; *The Concordia Affinitatis*, Ibid. 289.

7. Where there has been a suppression of papers only conjecturally accounted for, there must be further proof. *The Polly, Lashy*, 2 C. Rob. 361.

8. On a claim by a neutral in the Prize Court that the vessel had been purchased by him in the enemy's country, the absence of a bill of sale will be a cause for further proof. *The Welvaart, Cornelis*, 1 C. Rob. 122.; *The Juffrow Anna, Grefson*, Ibid. 124. A; *The Hoffnung, Berens*, 2 C. Rob. 162.

9. *Quere*, how far under the treaty with Portugal that free ships should make free goods, that privilege can be extended to the carriage of enemy property out of a blockaded port? This question not distinctly arising, the cargo being documented as the property of Portuguese neutral merchants, though claimed generally and not verified in the depositions, restitution decreed, the Court declining, under the circumstances, to order further proof of the property. *The Nossa Senhora da Adjudá, Arango*, 5 C. Rob. 52.

### IV. HOW FAR RE-OPENING THE CAUSE.

10. Further proof does not open the case to both parties, so that the captors can introduce affidavits to contradict it; though with respect to plea and proof this is true. The rule is, that further proof by affidavits to be exhibited on the part of the captor is only admissible under the special direction of the Court. *The Adriana, Fitzpatrick*, 1 C. Rob. 313.

11. Further proof having been ordered by the Court expressly with respect to the property and destination on the return voyage, on the production of such further proof by the claimants, the Court refused to permit counsel to argue for condemnation on a fresh ground of impeachment disclosed by the further proof, holding that the direction for further proof was specific, and that the Court would act in conformity thereto, and confine all objections to those points which the order of the Court had already pointed out as the proper subjects of investigation. *The Lydiahead, Stanwood*, 2 Acton, 133.

### V. WHERE ALLOWED — ET CONTRA.

#### 1. To neutrals generally.

12. Further proof is the privilege of honest ignorance or honest negligence to neutrals who have not violated the law of neutrality. *The Welvaart, Cornelis*, 1 C. Rob. 123.

13. Further proof will not be allowed to neutrals covering an enemy's interest with their own with a fraudulent view. Condemnation. *The Graaff Bernstorff, Belmer*, 3 C. Rob. 109.

14. The Court would strain to relax the rule of this decision, where the suppression of enemy interest was inadvertent and not fraudulent. *Ibid*.

#### 2. To verify the ship's papers.

15. The papers of property claimed as neutral must be verified by the oath of the master; and if he be only a carrier he must swear that he believes the cargo to be owned as asserted in the claim. Further proof ordered to let in such verification. *The Juno, Beard*, 2 C. Rob. 120.

*See antè, No. 6.*

#### 3. To disprove the depositions and ship's papers.

16. The rule that no claim shall be admitted in opposition to the depositions and

ship's papers is not inflexible either as to property or destination. On a claim for a cargo of Spanish wool as exempt from seizure under the Order in Council of September, 1803, further proof allowed as to the destination, the case being *Held* to be entitled to some indulgence, as occurring at the beginning of the war. *La Flora*, *Klein*, 6 C. Rob. 1.

17. In a case of insufficient proof of property as to the ship, accompanied by suggestions of enemy interest by the crew, whose evidence, however, was liable to impeachment, further proof allowed. *The Franklin*, *Dona*, *Ibid.* 127.

18. Further proof refused to claimants to disprove the ship's papers, which represented the cargo as Danish to evade the belligerent right of an ally or of this country, and ship and cargo condemned to the Crown as a *droit*, as being enemy property taken prior to the declaration of hostilities. *The Orion*, *Petersen*, 1 Acton, 205.

*See CLAIMANT, cap. I.*

4. *In cases disclosing fraud, mala fides, or suspicious circumstances.*

19. Where gross misconduct is proved against the persons claiming an interest in the property, further proof is never allowed. *The Vrow Hermina*, *Jonker*, 1 C. Rob. 165.

20. Where on the face of a cause, as it is originally presented, there appears *mala fides* on the part of the claimant, he cannot have an order for further proof. *The Juffrow Anna*, *Grefson*, *Ibid.* 124.; *The Eenrom*, *Fronier*, 2 C. Rob. 15.

21. Cases of refusal of further proof on the ground of fraud of claimants. *The Flad Oyen*, *Martenson*, 1 C. Rob. 134.; *The Argo*, *Smit*, *Ibid.* 159.; *The Eenrom*, *Fronier*, 2 C. Rob. 1.; *The Calypso*, *Speck*, *Ibid.* 154.

22. Further proof of ship and cargo refused to parties implicated in the fraud of imposing a false destination. *The Mars*, *Murfey*, 6 C. Rob. 79.

23. A party appearing to be the detected agent for covering enemy property under false appearances cannot be admitted to the benefit of exhibiting further proof. *The Zulema*, *Aflon*, 1 Acton, 17.

24. Application for further proof granted, notwithstanding circumstances of suspicion in the general trade of the asserted neutral owner. *The Jane*, *Lynch*, *Ibid.* 38.

25. The claimants of part of cargo admitted to exhibit further proof, although

the ship was discovered to have mysterious papers on board. *The Titus*, *Cushing*, *Ibid.* 18.

*See ante*, No. 14.

5. *In cases of purchase from the enemy.*

26. Further proof denied in a case where a ship purchased of the enemy had been left under the management of the former owner in the enemy's trade. *The Jemmy*, *Nosten*, 4 C. Rob. 31.

27. A vessel was sold in a blockaded port by a neutral, who had himself purchased of the enemy since the commencement of hostilities, and was taken coming out of the blockaded port. Further proof refused. Condemnation. *The Vigilantia*, *Reynaert*, 6 C. Rob. 122.

28. Further proof of property admitted as to a ship and cargo claimed for a neutral merchant, although both appeared to have been purchased in the enemy's colony by his asserted resident agent, without particular instructions to make the purchase, but acting under a general permission given him to originate speculations for account of the neutral merchant. *The Mercury*, *Speck*, 1 Acton, 66.

*See ante*, No. 8.

6. *In cases of false destination.*

29. Further proof refused in the case of a shipment for neutral merchants, between enemy ports, but with a colourable destination to a neutral port. *The Carolina*, *Hartman*, 3 C. Rob. 75.

30. A cargo of corn was taken out of an American vessel and put on board three other vessels, which were taken as prize. Two of the cargoes were condemned, further proof having been refused on the ground of false destination. As to the third cargo, there was strong suspicion of a similar destination, which not being, however, disclosed in the evidence, the Court permitted further proof, but intimated that it should expect stringent proof. *The Convenientia*, *Peterson*, 4 C. Rob. 205.

7. *In cases of spoliation of papers.*

31. A spoliation of papers is not alone in the British Court of Admiralty a cause of condemnation; but if attended with other circumstances of suspicion, the person guilty thereof shall not have the aid of the Court or be permitted to give further

proof, if such be necessary. *The Rising Sun, Wilkie*, 2 C. Rob. 104.

32. Claim of a master guilty of spoliation of papers, and adducing an improbable case for portion of cargo of which he asserted himself to be the owner, rejected, and further proof refused to him, but admitted to his owners, claimants of the rest of the cargo, the Court holding them not concluded by his misconduct, except as to freight. *Ibid.*

33. Spoliation of papers excludes further proof. *The Hunter, Rogers*, 1 Dodson, 480.

#### 8. Where there was delay in exhibiting.

34. Condemnation of a portion of cargo having passed in the Court below, in consequence of further proof not having been exhibited there within a specified time, on application of the claimants, on appeal, to be permitted to exhibit such proof, then only just obtained from abroad, an affidavit required to account fully for the delay, prior to permission being given for their introduction. *L'Invidiato, Casnacich*, 1 Acton, 110.

35. Further proof refused, on appeal, to claimants resident in Bohemia, who had neglected to enter a claim in proper time in the Court below, where, after adjudication had been reserved for a considerable time to admit of a claim being preferred, the property was at length condemned, from which sentence no appeal had been interposed until seven months afterwards; no reasonable explanation for such delay being given. *The Europa, Christian*, *Ibid.* 320.

#### 9. A second time.

36. Further proof ordered a second time. *The Concordia Affinitatis*, Hay & Mar. 289.

37. After a cause has undergone a trial by plea and proof, there cannot be a second reference for further proof. *The Magnus, Sorensen*, 1 C. Rob. 36.

#### 10. Other cases.

38. Cases in which further proof was ordered. *The Anna, Christiana*, Hay & Mar. 161.; *La Prosperité or Welfaren*, *Ibid.* 164.; *The Concordia Affinitatis*, *Ibid.* 169.; *The Wandringsman*, *Ibid.* 176.; *The Hoop, De Vries*, 1 C. Rob. 129.; *The Carotina*, *Ibid.* 305.; *The Ceres, Rackow*, 3 C. Rob. 79.; *The Carl Walter, Schmidt*, 4 C. Rob. 213.

39. Cases in which further proof was refused. *The Vrow Judith, Volkerts*, 1 C. Rob. 153.

40. Further proof ordered on cargo of warlike stores on board a neutral general carrier, consigned to an enemy port, the bills of lading not specifying on whose account and risk, and the master being unable to swear to the real owners. *The Vrow Antoinette*, 1 Hay & Mar. 142.\*

41. In a case of asserted breach of blockade, further proof permitted to be given explanatory of instructions from the owner to the master, to inquire in the neighbourhood of the blockaded port relative to the existence of the blockade. *The Little William, Brown*, 1 Acton, 141.

## GREENWICH HOSPITAL.†

### I. OF THE PERCENTAGE ON PRIZE, ETC., PAYABLE TO —

#### 1. Statutory regulations thereon.

##### (a) Of the construction thereof.

### I. OF THE PERCENTAGE ON PRIZE, ETC. PAYABLE TO —

#### 1. Statutory regulations thereon.

##### 1. By 54 Geo. 3. c. 93. s. 2. Greenwich

Hospital is entitled to the shares of prize money of all deserters, and to all shares not claimed within six years; but shares not so claimed, on reasonable cause shown and allowed by five or more of the Directors of Greenwich Hospital or by the

\* 2. The modern practice, however, has been to condemn cargoes of this kind on such destinations without reference to the question of the neutrality of the owners. See CONTRABAND.

† 1. The principal statutes now in force relating

to Greenwich Hospital are the 10 Geo. 4. c. 25., 2 W. 4. c. 40. s. 4., 4 & 5 W. 4. c. 34., and 8 Vict. c. 22., and as to out-pensions 10 Geo. 4. c. 26. (in part repealed by 1 Vict. c. 32., and 9 Vict. c. 10.), 9 Vict. c. 9., and 9 Vict. c. 10.



Judge of the High Court of Admiralty, shall not be forfeited.

2. By 57 Geo. 3. c. 127. s. 1. prize agents are to retain and pay over to the treasurer of Greenwich Hospital 5*l*. per cent. on all prizes, grants, bounties, seizures (under the Revenue, Navigation, and Slave Abolition Laws), and derelicts, taken, made, or found by his Majesty's ships; and by s. 2. the same royal hospital is declared entitled to all unclaimed and forfeited shares thereof; and agents are to be subject to the same regulations, &c. for the transmission of accounts thereof, &c., as with regard to the per-centage on prize money in 54 Geo. 3. c. 93.

3. By 6 Geo. 4. c. 49. s. 4. the shares of deserters in the bounties by that act conferred on the capture of pirates, and all unclaimed shares thereof, are to be paid to Greenwich Hospital, as by 45 Geo. 3. c. 72. is directed with regard to such shares of prize-money.

4. By 10 Geo. 4. c. 26. s. 17. all forfeited and unclaimed shares and balances of prize money, and 5*l*. per cent. of the proceeds of prizes, grants, bounty monies, revenue, colonial, navigation, or slave seizures, droits of Admiralty, and derelicts, theretofore payable to the treasurer of Greenwich Hospital or his deputy, are to be paid to the treasurer of the Navy, and applied by him in aid of Greenwich out-pensions; and by ss. 18, 19, 20. all the powers with regard thereto theretofore exercised by the treasurer of Greenwich Hospital and clerk of the cheque there, are transferred to the treasurer of the Navy.

5. By 2 W. 4. c. 40. s. 20. the above duties are transferred to the Commissioners of the Admiralty, save as to the receipt and payment of such monies, and the management of Greenwich out-pensions.

6. By 10 Geo. 4. c. 26. s. 22. prize agents are to pay over to the treasurer of the Navy, for the benefit of Greenwich Hospital, 5*l*. per cent. on the net proceeds of all naval prize, bounty money, head-money, grants, and other allowances in the nature thereof, piratical, revenue, colonial, navigation, or slave seizures, civil salvage, and vessels derelict, and monies arising therefrom, to which any of the officers or crews of any of his Majesty's ships shall be entitled, and which per-centage was hereto-

fore payable to Greenwich Hospital; and by s. 23. the receiver of droits of Admiralty is directed to pay over 5*l*. per cent. in like manner.

7. By 8 Geo. 1. c. 24. s. 5. seamen maimed in fight against pirates shall, in addition to the rewards conferred by 22 & 23 Car. 2. c. 11., be preferably entitled to be admitted into Greenwich Hospital.

## 2. Of the construction thereof.

8. The 57 Geo. 3. c. 127., giving to Greenwich Hospital a claim of 5*l*. per cent. upon all grants whatsoever, construed to apply to remunerative grants for captures purely naval, and not to booty taken by a conjunct expedition of land and sea forces. *Genoa and its Dependencies*, 2 Dodson, 444.; *Booty in the Peninsula*, 1 Hagg. 39.

9. The 57 Geo. 3. c. 127. held to subject every acquisition which shall be distributable to officers and crews of his Majesty's ships, and to marines, to 5*l*. per-centage to Greenwich Hospital. *The Thetis*, 3 Hagg. 233.

10. The per-centage to Greenwich Hospital, under the several Acts, was given as a liberal and equitable contribution, on the part of officers and men receiving something beyond their pay, towards the support of this institution. *Ibid.* 230.

11. In a suit against the Hospital to refund a deduction of 5*l*. per cent. paid under the 57 Geo. 3. c. 127. on parliamentary grants in lieu of proceeds of capture, such grants held to have been made in respect of services of the navy only, and not of a conjunct expedition of army and navy, and therefore liable to such deduction. Per-centage allowed. *Booty in the Peninsula*, 1 Hagg. 39.; *The Cayenne*, *Ibid.* 41.

12. Civil salvage, as well of derelict as otherwise, to officers and crews of ships in his Majesty's service, held liable, under the 57 Geo. 3. c. 127. and 10 Geo. 4. c. 26., to the 5*l*. per-centage to Greenwich Hospital, and prize agents to be bound to retain and pay over such per-centage to the treasurer of the Navy; the per-centage having been paid by a prize agent under protest, the treasurer of the Navy, who appeared to a monition against him to refund the same, dismissed. *The Thetis*, 3 Hagg. 228.

## HEAD-MONEY.

## I. OF THE JURISDICTION OF THE COURT OF ADMIRALTY AS TO —

## II. OF THE RIGHT TO —

1. *What forces entitled to — et contra.*
2. *On what prizes and crews attaching — et contra.*

3. *What services are sufficient to found claims to — et contra.*

4. *In cases of joint-capture.*

(a) *Generally.*

(b) *In general engagements, or by combined operations.*

(c) *In particular combats.*

## 1. OF THE JURISDICTION OF THE COURT OF ADMIRALTY AS TO —

1. The Court of Admiralty does not pronounce whether head-money is due; it goes no further than to intimate its opinion, by declaring the number of persons who were on board at the time of the engagement. *Le Francha*, 1 C. Rob. 157.

2. But the Commissioners, who are to pay the head-money where due, are not bound to pay upon the opinion so intimated; though, if they do pay, they are bound by the declaration of numbers made by the Court. *Ibid.*

3. On an attestation and certificate the Court pronounced a certain number of men to have been on board a prize at the commencement of the action, reserving the question as to head-money being due thereon. *La Bellone*, *Duperre*, 2 Dodson, 343.

4. In a case of prize taken in a conjunct expedition of land and sea forces, the Court of Admiralty, on the application of the captors, and the consent of the Lords of the Treasury through the King's proctor, took into consideration the question of the captor's right to head-money under the stat. 45 Geo. 3. c. 72. *Ibid.*

## II. OF THE RIGHT TO — \*

1. *What forces entitled to — et contra.*

5. Head-money is not due under the stat. 45 Geo. 3. c. 72. to conjunct forces of the army and navy, on ships captured by such forces, unless the army acted on the occasion in a naval capacity, soldiers not being recognised in that statute as grantees, except when clothed with a naval character by serving on board ship. Such conjunct action held to exclude the claim

of the navy *per se*. *La Bellone*, *Duperre*, 2 Dodson, 349.

6. The general principle of the navy is strongly recognised, of holding a strict unity and identity between the several classes of seamen composing a ship's company, even in head-money or bounty. *Two Piratical Gun Boats*, 2 Hagg. 408.

2. *On what prizes and crews attaching — et contra.*

7. To entitle parties to head-money under the Prize Act the captured vessel must have been a commissioned ship-of-war; mere armed vessels or an armed packet belonging to the Sovereign of the enemy cannot be considered legally as ships-of-war within the meaning of the Prize Act, so as to entitle captors to head-money. Application for same on such prizes refused accordingly. *Several Dutch Schuyts*, 6 C. Rob. 48.

8. Head-money held not to be due for British prisoners of war on board an enemy's frigate. *The San Joseph*, *Argois*, *Ibid.* 331.

9. Application for head-money for five Capuchin Friars, passengers, rejected. *L'Hercule*, 1 Hagg. 211.

10. If a cargo be on board the precedents are against pronouncing for head-money. *Le Francha*, 1 C. Rob. 157.

11. Head-money is given on capture of public ships-of-war, notwithstanding they have a cargo on board, but is not given on capture of private ships-of-war under similar circumstances. *The Santa Brigada*, *Pilow*, 3 C. Rob. 56.

12. The military character of a vessel is not so lost by capture and recapture as to extinguish the right to head-money.

\* 1. By the 55 Geo. 3. c. 160. ss. 6, 7, 8., captors are to be paid head-money of 5*l.* for each man at the commencement of the action on board an enemy ship taken or destroyed by the captors, and

the course to be pursued by the captors to obtain payment thereof, with other provisions thereon, is therein set forth. (This act, however, expired with the last war.)

An English privateer having, after a severe action, taken a prize which was dispatched to England, but was on such voyage retaken by the enemy and again recaptured by an English frigate: *Held* entitled to head-money on the crew at the first capture and the English frigate to the crew on the last capture. The Court, under such circumstances, will go as far as possible in support of such a claim of a first captor. *The Matilda, Rantin*, 1 Dodson, 367.

3. *What services are sufficient to found claims to — et contra.*

13. It is not necessary that there should be an actual fight to support the demand for head-money on the part of the taker, since if the enemy is overpowered by superior force the surrender operates in the same manner and to the same effect as if he were subdued in actual contest. *L'Alerte, Demay*, 6 C. Rob. 242.

14. Head-money originally was the reward of actual combat only, but in later times the necessity of actual combat has been dispensed with, and the capture itself, whether produced by actual combat or not, has been held a sufficient foundation for the claim, but the act of capture must be consummated to confer a claim for head-money. *The Clorinde, Le Garde*, 1 Dodson, 439.

15. Head-money pronounced to be due in respect of men escaping on shore where the enemy's ship-of-war had been run aground and destroyed, they having been proved to have been on board at the commencement of the attack. *The Babilion*, Edwards, 39.

16. A claim for head-money for having attacked, driven on shore, and fired an enemy's vessel, leaving her so disabled as to be obliged to be broken up by the enemy, rejected, neither the ship, guns, nor men, having been acquired to this country nor wholly lost to the enemy. *L'Elise or Louisa*, 1 Dodson, 442.

17. Head-money is due for an enemy's ship-of-war set on fire and thereby totally destroyed by her own crew in consequence of the approach of a British force. *The Uranie, Morgotte*, 2 Dodson, 172.

18. Application for head-money on the crew of a captured privateer, which crew had been landed by the captor at a French settlement, rejected, there being no sufficient proof of an effective exchange of prisoners, notwithstanding an affidavit of

the captor that the crew had been so landed with a view to exchange, that a promise was given by the French commandant of the place to deliver an equal number of British prisoners should any arrive, and that it was the custom of the West Indies to land prisoners unconditionally at the nearest port if an exchange were not practicable. *La Lune*, 1 Hagg. 210.

4. *In cases of joint-capture.*

(a) *Generally.*

19. Head-money is the peculiar and appropriate reward of immediate personal exertion, and consequently whenever any claim to participate in a bounty so appropriated has been advanced, it has always been considered in a more rigid manner than those which arise out of the general interests of prize, and all such claims ought to be brought to an early determination. *La Gloire, and three others*, Edwards, 280.

20. Where therefore the question of fact or of law as to the interest of a joint taker is doubtful, the Court leans to the clear and incontestible interest of the actual taker. Claim of asserted joint takers to share in head-money rejected. *Ibid.*

21. Head-money is considered more as a reward for real and active service, though such an interpretation is not very prominently called for by the mere textual expressions of the statute. *The Ville de Varsovie*, 2 Dodson, 303.

22. Claims to head-money stand on a different principle from that which governs the general interests of joint-captors. Claim of constructive joint-captors to head-money pronounced against. *L'Hercule*, (Lords, 26th July, 1799); *L'Alerte, Demay*, and note thereto, 6 C. Rob. 238.

23. The benefit of head-money is restricted within narrower limits than that of prize, and is considered to belong more immediately to actual captors. *The Ville de Varsovie*, 2 Dodson, 184. 302.

24. The rules regarding head-money differ widely as they regard claims arising out of general engagements or of particular combats. In the former, proof of the claimant forming part of the general body, of presence within a sufficient distance to give any assistance required to that part of the force immediately engaged, and of immediate support, not remote encouragement to the enterprise as far as it was necessary for him, will entitle him to share. In the latter, proof of the claimant having directed his force to the particular object

in the requisite degree is alone necessary to found such title. *Ibid.* 305. 316.

25. Sight alone is not sufficient to give a title to share in head-money. *Ibid.* 303. 318.

*See antè, No. 6.*

(b) *In general engagements or by combined operations.*

26. In a general action the whole fleet is entitled to head-money on the capture of a vessel, notwithstanding the formal surrender was made to one particular ship belonging to the fleet. *The El Rayo*, 1 Dodson, 43.

27. In a general engagement all are entitled to share in head-money without regard to particular merits or sufferings. *The Ville de Varsovie*, 2 Dodson, 304. 313.

28. Where there has been an engagement the Court will not raise the presumption of intimidation from mere presence, as in cases of prize. A ship unassociated, to found a claim to share in head-money, must show a concurrence by actual proof of engaging in the combat, or of having actually contributed mainly to produce a surrender by her appearance at the scene of action. *Ibid.* 318.

29. The *El Rayo*, a Spanish vessel, which formed part of the French and Spanish fleet in the action off Trafalgar and fled to Cadiz, two days afterwards came out to relieve some of the vessels in distress, when she was captured by the *Donegal*, who was not engaged in that action. The *El Rayo* made no resistance. Several ships of the British fleet, particularly the *Leviathan*, were in sight and could have afforded assistance had it been necessary. They were all, however, engaged in taking care of disabled ships and prizes. The *Leviathan* fired a shot, which fell near the *El Rayo*, but not with a view to intimidate her, but as a signal to another vessel. *Held*, that the *Donegal* was entitled to head-money on the *El Rayo* to the exclusion of the fleet. Claim of the *Leviathan* to participate with the *Donegal* rejected. The expenses on all sides decreed to be paid out of the head-money. *The El Rayo*, 1 Dodson, 44.

30. Head-money *Held* to be due to the whole of a fleet employed in blockading certain ships of the enemy and not to the fire-ships only, which with a few vessels of the fleet effected the destruction of the

blockaded ships, such force being proved to be included in and under the orders of the commander of the fleet, by whose orders and directions such proceedings were executed and to have been aided and assisted by the rest of the fleet, who, however, did not come within gun-shot of the scene of action. *The Ville de Varsovie*, 2 Dodson, 301.

*See antè, No. 24.*

(c) *In particular combats.*

31. An honest and anxious endeavour to share in the peril will not, unless such endeavour brings the parties within the capacity of actual sharing in such peril, give a title to share in head-money. If two ships-of-war, otherwise unconnected, chase and the one comes up, fights, and captures before the arrival of the other, the latter is not entitled because she had not, though using her best endeavour, brought herself within the sphere of action. But if she had so done and only refrained from actually mixing in the fight, then terminating, because the force immediately applied was already more than was necessary, she would be entitled to share in head-money. *The Ville de Varsovie*, 2 Dodson, 303.

32. Where one ship fought and disabled the enemy, in consequence of which another ship took her without resistance, the Court can and will confirm the capture as one common act by both vessels, holding both to be entitled. It cannot, however, make any apportionment between them. *The Clorinde, Le Garde*, 1 Dodson, 440.

33. Two vessels having pursued a prize and a surrender having been produced by the exertions of both vessels, both are entitled to share in the head-money, notwithstanding that the actual surrender was made to, and possession taken by, one of the vessels only. *The El Rayo*, *Ibid.* 45.

34. Two vessels having contended a long time in vain with a prize, which, on the appearance of a third vessel, immediately surrendered, the third vessel *Held* entitled to head-money, on the ground that the surrender was occasioned by her presenting herself on the scene of action, notwithstanding she had not at the time of the surrender arrived within gun-shot. *The Ville de Varsovie*, 2 Dodson, 303.

*See antè, No. 24.*

*See JOINT-CAPTURE.*

IDENTITY.

1. In a case of asserted joint-capture, the identity of the vessel claiming as joint-captor, the *onus* of proof of which was *held* to fall upon the claimant, pronounced insufficient, and claim dismissed accordingly. *The Lord Middleton, Mentrie*, 4 C. Rob. 153.

2. The identity of two vessels seen in a chase, as actual captor and prize, *Held* to be established by the circumstances attending the chase. *The Union, Olmsted*, 1 Dodson, 346.; *The Sparkler, Brown*, Ibid. 361.\*

INHIBITION.

1. An inhibition from the Judicial Committee of the Privy Council to the Judge of an inferior Court is not to be disregarded at his discretion, although he may consider that he is acting for the benefit of all parties; but though he thereby commits an error of judgment, unless such disobedience be wilful, and proceed from improper motives, the Court will not visit him with the penal consequences of an attachment for contumacy and contempt. *Barton v. Field*, in the matter of the ship *Winwick*, 8 Jur. 113.

2. *Semble*, that an inhibition does not

remain in force so as to prevent the inferior Court from proceeding on the same and also on additional facts in a subsequent suit, the original suit having been dismissed in the Court of Appeal by consent of parties. *Smyth v. Smyth*, 4 Hagg. (Eccl.) 72.

3. Case of refusal of inhibition; *semble*, on the ground that the matters complained of did not constitute an appealable grievance. *Herbert v. Herbert*, 2 Phill. 430.

See APPEAL; SLAVE TRADE.

INTEREST.

1. It is not the practice of the Court of Admiralty, as it is of the Court of Chancery, to order the money of suitors to be put out at interest, except upon their joint application and consent. A demand of interest against a commissioner of appraisement and sale not sustained. *The Princess Zavala and La Reine Elizabeth*, 2 C. Rob. 31. 49.

2. Prize agents are subject to the order of the Prize Court for interest of money detained in their hands. Interest decreed against them accordingly, and expenses. *The brig Louis*, 5 C. Rob. 146.

3. Agent, by the desire of his principal, keeping large sums in his hands, for which he was to be responsible from time to time, and duly accounting, *Held* not liable to interest, even supposing he employed it. *Lord Chidworth v. Edwards*, 8 Ves. 48.

4. Interest allowed for a ship and cargo wrongfully taken by the defendant, and this being done in the Indies, Indian interest allowed, deducting the charge of the return. *Ekins v. E. I. Comp.*, 1 P. W. 395.

5. Interest upon interest is never given. *Waring v. Cunliffe*, 1 Ves. jun. 99.

6. Where there was a great arrear of interest due on a mortgage, interest allowed for the interest reserved in the body of the deed. *Howard v. Harris*, 1 Vern. 194.

7. Interest upon interest decreed where the decree had been made up, but payment delayed by appeal. Registrar's report thereon confirmed, deducting two months for convenience of payment, and confirmation of former report on first decree. *The Driver, Cashman*, 5 C. Rob. 145.

\* In a case of damage the identity of the vessel proceeded against with that committing the damage was denied by the owners of the former; but the

question was not decided by the Court, the claim for damage being pronounced against on the general merits of the case. *The Bolina*, 3 Notes of Cases, 209.

8. On an account settled, interest, forming part of that account, becomes principal, and bears interest as part of the principal, though interest upon interest is not allowable. *The Dundee, Holmes*, 2 Hagg. 143.

9. In a cause of collision where payment of a sum for damage, interest, and costs reported to be due had been delayed by the party liable (by proceedings for a prohibition without effect), the other party is

entitled to interest on the whole sum from fifteen days after the date of the report. Objections to further report of registrar and merchants, allowing such further interest, overruled. *Ibid.*

*On bottomry bonds — see*  
BOTTOMRY.

*Of the responsibility of*  
prize agents for — see PRIZE  
AGENTS.

### INTERVENERS.

1. A person who has no interest cannot be permitted to intervene in a cause. *Brotherton v. Hellier*, 1 Lee, 599.

2. Interveners must take the cause in which they intervene as they find it at the time of such their intervention. Hence they can only of right do what they might have done had they been parties in the first instance, or had their intervention occurred at an earlier stage of the cause. *Clement v. Rhodes and others*, 3 Add. 40.

3. No party, whether such originally or a mere intervener in a cause, can of right

plead in the principal cause after publication; but the Court, if prayed, may still, *ex gratia*, permit a party so to plead on cause shown. Facts set forth in an affidavit, in order to found a prayer to that effect on the part of an intervener, *Held* to be insufficient to sustain the prayer; but the party so praying permitted, under the circumstances, to cross-examine the witnesses on the other side (after publication of the evidence), on first giving security for the payment of costs, if finally awarded against him. *Ibid.* 37.

### JOINT-CAPTURE.

I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF —, 183.

II. OF THE PRINCIPLES OF —, 183.

III. OF THE REQUISITES OF PROOF IN CAUSES OF —, 183.

IV. OF THE ONUS OF PROOF IN CAUSES OF —, 184.

V. OF THE RESPONSIBILITY OF JOINT-CAPTORS. 184.

VI. WHAT FORCES ARE ENTITLED TO CLAIM AS JOINT-CAPTORS — ET CONTRA, 184.

1. *Land forces*, 184.

2. *Allied forces*, 185.

3. *Convoying ships*, 185.

4. *Ships having a sufficient military character impressed upon them — et contra*, 185.

5. *Non-commissioned vessels*, 185.

VII. WHAT SERVICES WILL ENTITLE TO THE BENEFITS OF — ET CONTRA, 185.

1. *Sight*, 185.

2. *Chase*, 187.

3. *Co-operation and association*, 188.

(a) *Generally*, 188.

(b) *In blockade*, 189.

(c) *Where ships associated with the capturing force were detached prior to the capture*, 190.

4. *Services antecedent or subsequent only*, 190.

5. *Diversion of the course of the prize*, 190.

6. *The assistance of boats and tenders, how far entitling the ships to which they belong*, 190.

VIII. CLAIMS OF — WHERE PRONOUNCED FOR — ET CONTRA, 191.

1. *Where the asserted joint-captor was prevented rendering more efficient assistance by the orders of the captor*, 191.

2. *Where fraud is charged against the actual captor in preventing the co-operation of the joint-captor*, 191.

3. *In cases of alleged non-assertion and disclaimer of interest at the time by the asserted joint-captor*, 192.

4. *On written admissions (inter alia) of the actual captor*, 192.

IX. RULES OF DISTRIBUTION IN CAUSES OF —, 192.

X. PRACTICE IN CAUSES OF —, 192.

XI. COSTS IN CAUSES OF —, 192.

See FLAG SHARE, HEAD-MONEY, SLAVE TRADE.

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF—

1. A reference to the Court of Admiralty, from a Committee of the Privy Council, of a claim of the officers and crew of his Majesty's ship *Leda* to share as joint-captors in the proceeds of property on the capture of Buenos Ayres, received, and, the King's proctor having consented to appear, the claim adjudicated upon, notwithstanding the Court had no original jurisdiction in the matter. *Buenos Ayres*, 1 Dodson, 28.

2. Shipping, ordnance, &c. &c., seized on the taking an enemy's port by his Majesty's land and sea forces, having been condemned in the Court of Admiralty subject to his Majesty's direction for distribution among the captors, the Privy Council, on being memorialised by parties claiming to share therein as joint-captors, gave leave to them to take proceedings in the Court of Admiralty to obtain a sentence declaratory of their right as joint-captors. Leave having been signified accordingly through the King's proctor, the Court took cognisance of the claim. *Genoa and Savona*, 2 Dodson, 88.

3. A grant having been made by parliament in lieu of prizes restored to the enemy, the Court will proceed to adjudicate upon the claim of an asserted joint-captor, upon consent to the jurisdiction, and appearance to the usual process by the trustees of the grant through the King's proctor. *The Naples Grant*, 2 Dodson, 274.

4. By 3 & 4 Vict. c. 65. s. 22. jurisdiction is given to the High Court of Admiralty to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy Council, to refer to the judgment of the said Court; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

*See post*, No. 26.

## II. OF THE PRINCIPLES OF—

5. Capture is of two kinds: capture *de facto*, and capture by construction. The Act of Parliament and the prize proclamation give the benefit of prize "to the takers;" which term has been extended by construction so as also to include those who, not having contributed actual service,

are still supposed to have rendered a constructive assistance, either by conveying encouragement to the captor or intimidation to the enemy. *The Vryheid, De Winter*, 2 C. Rob. 16.

6. The principle of constructive assistance has been carried to its fullest extent; and the later inclination of Courts of Justice has been rather to restrain than extend the rule. *Ibid.*; *The Odin, Hals*, 4 C. Rob. 325.; *Le Niemen, Dupotet*, 1 Dodson, 16.; *Buenos Ayres*, *Ibid.* 34.

7. It is not every remote contribution of assistance, given with or without intention, that will entitle to the benefits of joint-capture. *The Vryheid, De Winter*, 2 C. Rob. 16.

8. Disparity of force is not conclusive against a claim for joint-capture. *The Santa Brigada, Pilow*, 3 C. Rob. 54.

9. The rule of law as to constructive assistance has always been held more strictly between a King's ship and a private ship-of-war than between King's ships. *The Odin, Hals*, 4 C. Rob. 325.

10. The legal prejudice against a constructive joint-captor is converted into his favour where there has been an actual engagement previously between him and the prize. *L'Etoile, Philibert*, 2 Dodson, 107.

11. The admission of a constructive (or joint) captor to share with an actual captor, is in itself an indulgent construction of the law, which must not be further extended. A ship which had joined in a previous chase with a constructive captor cannot be admitted to share as constructive joint-captor. *The Financier, Cathell*, 1 Dodson, 67.

12. In a claim for joint-capture with A. and B., preferred by C., C. having no privy of interest with B., the act of B. cannot enure to the benefit of C. *Le Niemen, Dupotet*, *Ibid.* 14.

*See post*, No. 99.

## III. OF THE REQUISITES OF PROOF IN CAUSES OF—

13. In a claim of joint-capture the actual captor is the favourite of the law, and the Court will not suffer his interest to be affected but by most satisfactory evidence. *The John, Turner*, 1 Dodson, 363.

14. It lies with the claimants in joint-capture to allege some cases in which their construction has been admitted in former instances, or to show some principle in their favour so clearly recognised and established as to have become almost a first

principle in cases of this nature. The being in sight, with some few exceptions, has been so often held to be sufficient to entitle persons to be admitted as joint-captors, that where that fact is alleged particular cases to authorize the claim are not called for, but where that fact is wanting it is incumbent on the party to make out his claim by an appeal to decided cases, or at least to principles fairly to be extracted from those cases. *The Vryheid, De Winter*, 2 C. Rob. 16.

15. The evidence of releasing witnesses, however respectable, is insufficient of itself to support a claim of joint-capture. *The Twee Gesusters*, cited in *The Robert, Paterson*, 3 C. Rob. 199.; *The Fadrelandet, Hoop*, 5 C. Rob. 122.; *The John, Turner*, 1 Dodson, 363.; *The Empress, Moran*, Ibid. 369.; *The Arthur, Rathbone*, Ibid. 428.; *The Galen, Rogers*, 2 Dodson, 21.

16. Where it is impossible to obtain witnesses from the captured vessel, a claim of joint-capture may be sustained on the evidence of releasing witnesses only. *The Galen, Rogers*, 2 Dodson, 21.

17. Claim of joint-capture pronounced for on the evidence of releasing witnesses and the answers of the actual captor. *The Empress, Moran*, 1 Dodson, 368.

18. The identity of the vessel claiming to share must be proved by the party claiming. Claim rejected on the ground of insufficiency of such proof. *The Lord Middleton, Mentrie*, 4 C. Rob. 153.

19. In a case of joint-capture *Held*, that in the absence of evidence to the contrary the general presumption that the captor did his duty extended to his conduct in a particular instance with reference to making signals when they could be made with effect. *Le Bon Aventure, Lamoriniere*, 1 Acton, 211.

20. In cases of joint-capture the vessel claiming as joint-captor and averring sight must prove that she was seen by the prize at the time of capture. It is not sufficient to prove sight of the prize by her at such time, the claim of joint-capture being

founded on the principle of implied intimidation. *The Sociedade Felix, Joao de Souza Campos*, 1 W. Rob. 309.

*See post*, Nos. 45. 116.

#### IV. OF THE ONUS OF PROOF IN CAUSES OF—

21. The *onus probandi* lies on the joint-captor; the actual captor's case in objection may be sustained by showing the deficiency in the joint-captor's case. *The Vryheid, De Winter*, 2 C. Rob. 16.; *The Dorstrecht, Admiral Lucas*, Ibid. 65.; *Le Bon Aventure, Lamoriniere*, 1 Acton, 211.; *The Union, Olmsted*, 1 Dodson, 349.; *The John, Turner*, Ibid. 363.

22. Claimants as joint-captors having issued a monition against the actual captor to show cause why they should not be admitted to share, thus throwing the *onus probandi* on the actual captor instead of on the claimants as joint-captors where it ought to reside, the actual captor may appear and give an allegation pleading the capture by him and denying the right of the other ship to share, when the *onus probandi* will be thrown upon them. If however, on appearing to the monition, he enters into an act on petition on the merits he has no right to claim consideration for the inconvenient position in which he has thereby placed himself. *The Ville de Varsovie*, 2 Dodson, 184. 301.

#### V. OF THE RESPONSIBILITY OF JOINT-CAPTORS.\*

23. The whole act of capture is the act of the captor, who is therefore alone responsible for costs and damages. A joint-captor is not exposed to such liability. *The Fadrelandet, Hoop*, 5 C. Rob. 123.

#### VI. WHAT FORCES ARE ENTITLED TO CLAIM AS JOINT-CAPTORS—ET CONTRA.

##### 1. Land forces.

24. To establish a claim of joint-capture on the part of an army there must be a

\* 1. By 55 Geo. 3. c. 160. s. 26., no claim on behalf of any asserted joint-captor shall be admitted before condemnation, unless security be given at the time that the party shall contribute to the actual captor his proportion of all costs and expenses attending the obtaining the adjudication, as well in the first instance as on appeal, and likewise his proportion of costs and damages that may be awarded against the actual captor, on account of the seizure and detention; and after final condemnation, no allegation setting forth such asserted

interest shall be admitted, unless the party shall have previously paid his proportion of all such expenses as shall have attended the obtaining such final condemnation, and unless he shall have shown sufficient cause to the Court why such claim was not asserted at or before the return of the monition, but the interest of any flag officer claiming to share by virtue of his flag shall not be affected by this regulation. (This act, however, expired with the last war.)



contribution of actual assistance, and the mere presence or being in sight will not be sufficient. When there is no preconcert it must not be a slight assistance, nor an assistance merely rendering the capture more easy or convenient, but some very material service directly or materially influencing the capture, so that it could not have been made without such assistance, or at least *not certainly* and without great hazard. *The Dordrecht, Admiral Lucas*, 2 C. Rob. 55.

25. Claim of land forces to share as joint-captors with the fleet in the capture of a Dutch fleet off the Cape of Good Hope, on the ground that they contributed to the intimidation of the enemy and prevented their destroying their vessels by running them on shore, rejected. *Ibid.*

## 2. Allied forces.

26. The Court of Admiralty would adjudge to an ally a proportion of booty taken in a conjoint expedition with a British force against a common enemy as legally due, not under the Prize Act but under the general Law of Nations. *French Guiana*, 2 Dodson, 159.

27. In a conjoint expedition of British and allied forces a capitulation to one does not oust the other's right to proceeds of prize, the capitulation being the consequence of the influence of the joint force. Neither would the possession of the conquered territory, passing by mutual agreement between the captors to such one captor, oust the rights of the other to such proceeds (unless the capitulation protected both public as well as private property), the right to booty commencing upon capitulation. *Ibid*, 160. 163.

## 3. Convoying ships.

28. An allegation given on behalf of convoying ships claiming as joint-captors and alleging that they could and would have chased and been present at the capture without deserting their convoy, had they not been misled by false signals of the captor, admitted to proof. *The Waaksambeid, Van Nierop*, 3 C. Rob. 1.

29. An allegation by the same parties in respect of another prize taken shortly afterwards rejected, on the ground that the convoying ships could not have chased and been in sight at the time of capture without having deserted their convoy. *The Furie, Pleit*, *Ibid*. 9.

## 4. Ships having a sufficient military character impressed upon them — *et contra*.

30. Claims of joint-capture by East India ships carrying troops to the Cape of Good Hope rejected, the facts not showing that they set out in an original military character, or that some military character had been impressed upon them by the nature and course of the employment, except as to one of such ships which was sent, under military orders, to create a diversion, and whose claim the Court allowed. *The Cape of Good Hope*, 2 C. Rob. 274.

## 5. Non-commissioned vessels.

31. Claim of a non-commissioned cutter to share as joint-captor with a commissioned cutter, both of whom had chased and captured a Dutch prize, pronounced for; but the share of the non-commissioned vessel condemned to the Crown as a droit of Admiralty. *The Twee Gesuster, note to Cape of Good Hope*, 2 C. Rob. 284.; *Le Franc Caspe, note to Cape of Good Hope*, *Ibid*. 285.; and see *The Zepherina, Lima*, 2 Hagg. 320.

## VII. WHAT SERVICES WILL ENTITLE TO THE BENEFITS OF — *ET CONTRA*.

### 1. Sight.

32. By the civil law, if two ships meet at sea, although they do not go forth as consorts, and the one ship, in the presence of the other, take a prize, the other ship shall have one-half of the prize, for although it did not take the prize, yet its presence at the time of the taking was a terror to the prize, *sine quo* it could not have been so easily taken. *Somers v. Buckley* (32 Eliz.), 2 Lev. 182. pl. 224., 6 Vin. Abr. 518.

33. The mere presence or being in sight among different parties of naval force is, with few exceptions, sufficient to entitle them as joint-captors, because they are always conceived to have that privity of purpose which may constitute a community of interests. *The Dordrecht, Admiral Lucas*, 2 C. Rob. 65.

34. Sight alone is, as a general rule, sufficient to entitle King's ships to be considered as joint-captors, the *animus capiendi* being presumed always to exist in their case. This rule, however, is liable to a few exceptions, such as the ships sailing in different directions, and at a great distance from each other, or the ship claiming as joint-captor lying unmanned and un-

rigged in port, physically impotent to afford encouragement to the friend or intimidation to the enemy. *The Galen, Rogers*, 2 Dodson, 24.

35. King's ships having proved an *animus capiendi* and sight, admitted as joint-captors. *The Galen, Rogers*, Ibid. 31.

36. In cases of joint-capture, the general principle is, that King's ships, being in sight, are entitled to share as joint-captors, especially when the *animus capiendi* is distinctly proved, or may fairly be presumed to have existed. *The Sociedade Feliz, Joao de Souza Campos*, 1 W. Rob. 310.

37. Sight, that is the being seen by the prize as well as the captor and thereby causing intimidation to the enemy and encouragement to the friend, is, between King's ships, generally sufficient to establish a claim of joint-capture, but not universally. The presumption arising from it may be rebutted or evicted by circumstances. Ships lying in a harbour under circumstances rendering it impossible for them to get out, or ships at sea unconscious of what is going on, and pursuing a different course, though having it in their power to render assistance, are, notwithstanding sight, not entitled to share as joint-captors. *La Melanie, Lafitte*, 2 Dodson, 125.

38. It is a long-established rule, that privateers, to found a claim of joint-capture, must show that they were constructively assisting. There must be the *animus capiendi* demonstrated by some overt act. The being in sight is not sufficient with respect to them to raise the presumption of co-operation in the capture, as they are not bound to put their commissions in use on every discovery of an enemy. *L'Amitié, Villeneuve*, 6 C. Rob. 264.

39. The being in sight, accompanied even by diversion of attention, is not sufficient to entitle a privateer to claim as joint-captor. Such a claim rejected. *The Santa Brigada, Pilow*, 3 C. Rob. 52.

40. The presumption in favour of a King's ship from being in sight alone is sufficient to support the *animus capiendi*, but *aliter* as to privateers. A contrary route, however, if proved, would defeat the claim even of a King's ship. *La Flore, Fils*, 5 C. Rob. 268.

41. Revenue cutters *held* not entitled to share as joint-captors from the mere being in sight. *The Bellona, Voltz*, Edwards, 63.

42. Where there is no association, sight is necessary to found a claim of joint-cap-

ture; but it is sufficient if the asserted joint-captor has been in sight. Sight at the time of capture is not absolutely necessary. *The Forsigheid, Willedsen*, 3 C. Rob. 316.

43. *Quere*, is not sight from the mast-head insufficient alone to found a claim of joint-capture? *The Robert, Paterson*, 3 C. Rob. 199.

44. Where sight at an earlier period is established, proof thereof at the time of capture is not so essential to entitle a party to share as a joint-captor, more especially where detention in the service of the actual captor is completely established. *The Sociedade Feliz, Joao de Souza Campos*, 2 W. Rob. 164.

45. In a claim of joint-capture grounded on being in sight, it is necessary to establish, notwithstanding there was a fog at the time, that the claiming vessel was *seen* by the actual captor, and also by the captured vessel; one of which facts must be established by evidence *aliunde* to that of the claiming vessel, and the other by implication and necessary inference. Allegation directed to be reformed accordingly to plead same. *The Fadrelandet, Hoop*, 5 C. Rob. 120.

46. In a case of joint-capture by a King's ship opposed by the actual captor on two grounds: 1st, that the asserted joint-captor had not complied with the requisitions of the act of 45 Geo. 3. s. 47., by payment of his proportion of the expenses attending the condemnation of the prize; and 2ndly, that the fact of sight at the time of capture had not been sufficiently proved by the asserted joint-captor: *Held*, that the asserted joint-captor had failed in substantiating his claim, which was pronounced against accordingly (reversing the decision of the Vice-Admiralty Court of Jamaica); with costs decreed to be paid out of the proceeds. *The Nostra Signora de los Dolores, Castaner*, 1 Acton, 262.

47. Claim of joint-capture where the asserted joint-captor had reconnoitred and stood off on another course, but before she was out of sight the prize was taken, rejected. *The Lord Middleton, Moftrie*, 4 C. Rob. 153.

48. A ship-of-war, *in itinere*, barely seeing or hearing a firing on the coast, which she is passing in the prosecution of her voyage, without knowing the occasion of the firing, or having any communication or concert with the force making the attack, is not entitled to share as joint-captor with that force in the beneficial effects of such

attack; but *aliter* if the parties had recognised each other. *Genoa and Savona*, 2 Dodson, 92.

49. A vessel in sight, but at a very considerable distance from the place of capture, and rendering no service, *held* not entitled to share as joint-captor. *La Melanie, Lafitte*, 2 Dodson, 126.

50. Claims of a King's ship to a share in a capture made by the boat of a privateer, on the ground of constructive assistance, from being in sight, sustained under the circumstances, although the King's ship was at anchor at the time of capture, she and the privateer being both becalmed, orders having been given on board of the King's ship to watch the prize, and the sails were hoisted to be in readiness if any resistance should be made to the boat, which was putting off from the privateer to board the prize, or if there should be any attempt to escape. *The Drie Gebroeders, Vandyk*, 5 C. Rob. 339.

51. Vessels lying in a harbour witnessing a chase must be in sight at the time of capture to be entitled to claim as joint-captors. *La Melanie, Lafitte*, 2 Dodson, 126.

52. A British squadron engaged in a very strict blockade, lying at anchor with their sails furled, and with the wind adverse for the chase of the prize, which they would not have seen but for the manœuvres of the actual captor, *held* not to be entitled to share as joint-captors, notwithstanding sight of the captor and prize during the chase and partially at the time of capture. *La Melanie, Lafitte*, *Ibid.* 131.

53. In a case of joint-capture sight by the prize of the joint-captor, who was in a condition to assist the captor if required, but was at anchor, under his orders (as the senior in command), to remain so until his return and pick up his boats, raises a sufficient inference of the *animus capiendi* on the part of the joint-captor. *The Sociedad Felix, Joao de Souza Campos*, 1 W. Rob. 310.

*See antè, No. 24., and post,*  
Nos. 60, 61. 65. 86, 87. 91.  
119.

## 2. Chase.

54. The act of chasing, if continued for any length of time, is sufficient to found a title of joint-capture even in privateers. It is not necessary that the joint-captor should actually board the prize; it is enough if there be an *animus persequendi* sufficiently indicated by the conduct of the

vessel and not discontinued. Claim of joint-capture in such a case pronounced for. *L'Amitié, Villeneuve*, 6 C. Rob. 267.

55. A ship beginning a chase and then discontinuing it is not entitled to share as joint-captor. *Le Niemen, Dupotet*, 1 Dodson, 16.

56. It is not necessary to constitute unity of chase that two vessels should have pursued the enemy in precisely the same or even in a parallel direction. A pursuit in opposite directions would not of necessity destroy unity of operation. *Ibid.* 15.

57. It is not necessary that the joint-captor should pursue the prize in the same course with the actual captor. *The Sparkler, Brown*, *Ibid.* 361.

58. A claim of joint-capture cannot be supported where the chase has been abandoned before the act of capture is consummated. Such a claim pronounced against. *The Rattlesnake, Maffet*, 2 Dodson, 32. 35.

59. A King's ship having an *animus capiendi*, knowing what was going on, and endeavouring to come up with the actual captor but prevented by the wind, *Held* to be entitled as joint-captor. *The Galen, Rogers*, *Ibid.* 25.

60. A vessel in chase of a prize was afterwards joined by another vessel, both of whom continued the chase, when, in consequence of the superior sailing of the latter, she succeeded in coming up with and taking the prize, the former vessel not being in sight at the time but on the chase: *Held*, that the former was entitled to share as joint-captor. *The Rattlesnake, Maffet*, *Ibid.* 34.

61. Supervening darkness *held* not to bar a claim for joint-capture preferred by a ship which gave chase to the prize in company with the actual captor, though the capture was not made within sight of the joint-captor, provided the chase were continued by both. *The Herman, Parlo*, cited in *Le Bon Aventure, Lamoriniere*, 1 Acton, 229.

62. Ships seen in chase during the day, continuing the pursuit in a proper direction after night comes on, and being in the vicinity of the prize at the time of capture, but prevented seeing the capture by the darkness of the night, are entitled to share as joint-captors. *The Union, Olmsted*, 1 Dodson, 346.

63. A joint-captor who joined in the chase of a prize taken in the night *held*, by his having come up next morning and then put forward his claim, to have sufficiently.

proved his having persisted in the chase. *Ibid.* 352.

64. A. and B. frigates chased a prize, A. lost sight of the prize during the night but continued to cruise in search; B. engaged: both B. and the prize being disabled, C., another frigate, came up and made the actual capture. Claim of joint-capture with B. and C. preferred by A. pronounced against. *Le Niemen, Dupotet*, *Ibid.* 9.

65. If two vessels be associated together for the purpose of effecting a capture, continuance of the chase is sufficient to give the right of joint-capture, and sight is not necessary. *L'Etoile, Philibert*, 2 Dodson, 110.

*See post*, No. 83.

### 3. Co-operation and association.

#### (a) Generally.

66. The going out on a common enterprise is not sufficient to entitle vessels to share equally and alike in the prizes that are made. *The Vryheid, De Winter*, 2 C. Rob. 16.

67. Actual intimidation alone, without co-operation and active assistance, would not found a claim of joint-capture. *The Cape of Good Hope*, *Ibid.* 282.

68. To sustain a claim of joint-capture it is not sufficient to show a general co-operation only, or one for purposes distinct from that of capture, but it is absolutely necessary to prove that the co-operation had a distinct reference to the capture, and that the capture was the produce of such co-operation and the object for which the vessels were united. Claim of joint-capture not meeting these requisite pronounced against. *The Nordstern, Samsing*, 1 Acton, 128.

69. When two vessels associate in pursuit of a prize, if either of them cease from the pursuit the association ceases at the same time. *The Rattlesnake, Maffet*, 2 Dodson, 35.

70. In order to vest a prize interest in a vessel engaged in the common service or in naval or military operations of that kind, it must be shown that the claiming vessel was present at some period of the operation, but there may be cases vesting an interest upon something falling short of this rule. *The Naples Grant*, *Ibid.* 277.

71. By the rules of the Navy, a junior officer upon coming in sight of a senior officer (though of the same rank) immediately becomes subject to his command. A communication from the senior officer, in

reply to a proposal from the junior officer that he should follow one of two prizes in sight, in these words, "I think you had better go after the other," *Held* to be a command to the junior officer so to do, and such command and the obedience of the junior officer thereto *held* to constitute an association of the two vessels for the purpose of capture of such prizes, entitling each vessel to share with the other as joint-captor. Claim of the vessel under the command of the senior officer to share in the prize taken by the vessel under the command of the junior officer pursuant to such orders pronounced for. *The Empress, Moran*, 1 Dodson, 368.

72. If one ship of a fleet associated for a common purpose take a prize in the night, the whole fleet would be entitled to share. *The Forsigheid, Willelsen*, 3 C. Rob. 317.

73. One of the vessels of a fleet stationed off an enemy port to watch the enemy's fleet having made a capture of a vessel, the cargo of which was afterwards condemned on a question of property, *Held*, that the rest of the fleet was not entitled to share, as the capture was not within the purposes for which they were associated. *The Nordstern*, (Lords, July, 1809), cited in *The Forsigheid, Willelsen*, Edwards, 126.

74. Claim of joint-capture established on the part of a fleet, the capture being within the purposes of the associated service. *The Forsigheid, Willelsen*, *Ibid.* 124.

75. A ship-of-war in sight and having a certain knowledge of an attack upon an enemy town and of the object of such attack, having no intention of leaving the scene of action, being under the orders of the officer commanding the naval force in such attack and communicating information thereon by signals, *Held* to be entitled to share as joint-captor in the beneficial effects of such attack. *Genoa and Savona*, 2 Dodson, 94.

76. Three ships took their station at different outlets of Port-au-Prince, to intercept a prize which was known to be under the necessity of passing through one of them. The capture having been made by one ship, claim of the others to share as joint-captors though not present at the capture rejected. *The Mars*, note to *The Vryheid, De Winter*, 2 C. Rob. 22.

77. Claim of certain ships of a British East India fleet to share as joint-captors in a prize taken by the remainder of the fleet

on the ground that, notwithstanding the claimants were not in sight prior to or at the time of capture, the whole fleet were an associated and confederated fleet for mutual defence by direction of the East India Company, and that they chased by order of the commodore, rejected. *Le Franc, Caspe, note to Cape of Good Hope, 2 C. Rob. 285.*

78. A squadron consisting of the ships Alfred, Dictator, Bittern, Zephyr, and Pelican, were sent on an expedition for the capture of the Island of Trinidad and the destruction of a Spanish squadron known to be lying there. *Held*, that these objects could not be regarded as inseparable and as forming one integral capture; the island, its fort, and ammunition stores might be taken as one definite collected object, but such movables as a squadron of ships, which might be there to-day and gone to-morrow, could not be identified with the island, and if the captures were at different times they would stand on very different considerations. *The Island of Trinidad and its Dependencies, &c., 5 C. Rob. 92.*

79. The Zephyr, before the squadron was taken, had been detached from the fleet on a purpose not collateral to the main object (to chase a privateer); and the Pelican had separated by stress of weather: *Held*, that the necessary facts, therefore, were not laid on which the principle of association could be applied to their case in respect to the capture of the squadron. *Ibid.*

80. And if they claimed on the ground of having joined the fleet, it must be shown that the junction took place at the time of capture, which did not appear. *Ibid.*

81. With respect to the island, it appeared that they were in sight the preceding evening; and therefore, whether the point of capture was to be taken either at the first overture for surrender (on that evening), or at the subsequent capitulation, or at the formal signing, these ships were clearly present, and entitled to share. *Ibid.*

82. The Dictator, the Alfred, and the Bittern, were in sight the next morning, when the capitulation was actually agreed upon, *Held* that, without determining how far it might have been sufficient to have arrived before the signing and formal execution of the articles, they were entitled to share in the capture of the island, but not of the squadron, which was taken the evening before. *Ibid.*

83. The fact of a vessel commencing a

second chase in sight of a fleet of which she had constituted a part before she had been detached by signal upon a former chase, and capturing the second chase at a distance from such a fleet, would not let in the claim of the whole fleet to share in a prize so made, where the fleet afforded no assistance or co-operation in the capture, but actually bore away from the captor on another tack. Claim of a fleet to share as joint-captors in such a case pronounced against (affirming the decision of the High Court of Admiralty.) *Le Bon Adventure, Lamoriniere, 1 Acton, 211.*

*See antè, Nos. 24. to 27., and post, No. 119.*

(b) *In blockade.*

84. The association together of ships for the maintenance of the same blockade forms an identity of service founding a joint interest in prizes taken for the violation of the blockade. *Aliter* as to a blockade imposed under the Order of Council of the 26th April, 1809. *The Arthur, Rathbone, 1 Dodson, 426.*

85. An association of vessels for the purpose of a blockade is of the most intimate nature possible in any service. *La Henriette, 2 Dodson, 98.*

86. An allegation on behalf of part of a fleet constituting a blockading squadron and claiming to share as joint-captors in prizes taken by a detachment of the fleet, pleading that the detachment was ordered to cruise nearer the shore but to keep within sight of signals, and that the prizes were taken by them when, in consequence of a haziness in the atmosphere, the fleet was out of sight, admitted to proof, as sufficient, if proved, to found their claim, the whole fleet being associated together for a common service, and the capturing ships being *Held* not to have been detached for a distinct and separate purpose. *The Forsigheid, Willadsen, 3 C. Rob. 311.*

87. An allegation on behalf of part of a fleet engaged in the blockade of the Texel, claiming to share as joint-captors with two smaller vessels of the fleet, which were ordered to cruise nearer shore as drawing less water, and bring in all prizes to the fleet, but which took the prizes in question out of the sight of and without any assistance from the fleet, admitted to proof, the capturing ships being *Held* not to be detached for a distinct and separate purpose, but one essentially connected with the common object, the maintenance of the

blockade. *The Harmonie, Deboer*, Ibid. 318.

88. Claim of joint-capture by ships stationed at different points in support of a blockade established. *The Guillaume Tell, Sannier, Edwards*, 6.

89. Claim of a King's ship to share as joint-captor in a parliamentary grant in lieu of prizes taken from the enemy pronounced for on the ground of her having been engaged in a common service and present and assisting at the commencement of the blockade, though not at the surrender of the prizes in consequence thereof and of a summons to surrender. *The Naples Grant*, 2 Dodson, 286.

90. When a prize is taken coming out of a blockaded port by one of the blockading squadron stationed off the mouth of the harbour, the other ships of the squadron, although stationed at some distance, but sufficiently near to be able to come up in time to render assistance if required, are entitled to share. *Aliter*, where the prize is a small unarmed coasting-vessel not coming out of or connected with such blockaded port, and taken in the night whilst endeavouring to run past the blockaded port upon her voyage. *La Henriette*, Ibid. 96.

91. Orders to two vessels to maintain a blockade under the Order in Council of 26th April, 1809, without referring in either of the orders to the other vessel, *Held* not to constitute a privity of service. Claim of one of such vessels as joint-captor rejected on failure of proof of association and of sight at the time of capture. *The Arthur, Rathbone*, 1 Dodson, 428.

(c) *Where ships associated with the capturing force were detached prior to the capture.*

92. It is necessary that where a vessel is detached and sent away she should be in pursuit of an object immediately connected with the service alleged to be rendered, and in addition to this she must be in sight at the commencement of the engagement, either in the act of chasing or in preparation for chase, or afterwards during its continuance, to entitle her to share. *The Vryheid, De Winter*, 2 C. Rob. 16.

93. Claim of joint-capture on the part of ships detached from the capturing squadron, on the ground of the special nature of the service and of agreements between the allied general and the admiral

of the fleet, pronounced against as not sustained by the facts. *The Stella Del Norte, Costa*, 5 C. Rob. 349.

*See ante*, Nos. 81, 82.

#### 4. *Services antecedent or subsequent only.*

94. No services antecedent or subsequent, unless the vessel be employed in the identical service of the expedition, will impart a prize interest. *Buenos Ayres*, 1 Dodson, 34.

95. A frigate which, pursuant to orders, cruised along the eastern coast of South America with a view to an expedition against some part thereof, there being then no fixed determination to attack Buenos Ayres, and which, having gone to St. Catherine's for water, returned to Buenos Ayres six days after its capture, *Held*, however meritorious her services, not to be entitled to share in the grant of property there captured, since there was no preconcert and no specific knowledge on her part of the expedition until after the capture. Costs of the claimants recommended to be paid out of the proceeds. *Ibid.* 28.

*See ante*, Nos. 81, 82.

#### 5. *Diversion of the course of the prize.*

96. A fleet or ship, which by accident or design diverts the course of an enemy, and by so doing occasions her capture by a totally distinct force, cannot be considered as a joint-captor. *Le Niemen, Dupotet*, 1 Dodson, 17.

97. A slight assistance rendered by one vessel to another in the early part of a chase, such as causing the prize to change her course, will not of itself found a claim to share in the prize. *The Rattlesnake, Maffett*, 2 Dodson, 35.

#### 6. *The assistance of boats and tenders — how far entitling the ships to which they belong.*

98. Constructive assistance by boats cannot entitle the ships to which they belong to share in the prize, though actual capture by their boats would be sufficient for the purpose. *La Belle Coquette, Andrieux*, 1 Dodson, 20.

99. In cases of mere constructive assistance the right of participation must be in proportion to the quantum of intimidation caused, and cannot go beyond the force actually seen by the enemy. *Ibid.*

100. A King's ship lying in harbour

effected a capture by her boats out of the harbour. A private ship-of-war which, having offered to co-operate, sent out a boat to assist in the capture, which boat was in sight at the time of capture, *Held* not entitled as joint-captor. *The Odin, Hals*, 4 C. Rob. 318.

101. A similar claim of joint-capture rejected in a case where the ships of the captor and asserted joint-captor were, as well as their boats, in sight at the time of capture. *The Nancy, Knudson, note to Odin, Hals*, *Ibid.* 327.

102. The A. despatched her boats in search of a prize reported to be on the coast; the boats were compelled to return before the actual capture took place (which was made by two schooners accompanying them); the fact of sight by A. not being sufficiently proved, *Held* that such assistance of the boats was not sufficient to entitle them, and, *à fortiori*, the ship to which they belonged, to share in the capture. *La Belle Coquette, Andrieux*, 1 Dodson, 21.

103. An allegation given on behalf of the A. averring that the actual captor, a hired armed tender, was attached to the A., who was on that account entitled to share, admitted to proof, though no orders of the Admiralty showing that the tender had been so attached were exhibited, the Court, however, intimating that unless such orders were produced the claim could not be substantiated. *The Anna Maria, Hildebrandt*, 3 C. Rob. 211.

104. Claim of a ship, to which a tender, a joint-captor, was attached, to share through her tender in the prize as a joint-captor, pronounced against, the Court holding her entitled only to share in the tender's proportion of the prize. Costs out of proceeds of the prize refused. *The Zepherina, Lima*, 2 Hagg. 317.

*See antè, No. 50., and post, No. 118.*

#### VIII. CLAIMS TO — WHERE PRONOUNCED FOR — ET CONTRA.

##### 1. *Where the asserted joint-captor was prevented rendering more efficient assistance by the orders of the captor.*

105. A brig engaged in a previous chase with a constructive captor, prevented from following up the chase by orders to pick up the boats of the constructive captor, *Held* not to be entitled to share as constructive joint-captor, no encouragement

of the friend or intimidation of the enemy being proved. Costs of the brig directed to be paid out of the prize proceeds. *The Financier, Cattrell*, 1 Dodson, 67.

106. Claim of joint-capture of a slave ship, preferred by a Queen's ship in sight of the prize at the commencement of the chase and, probably, at the time of capture, but who did not chase, though able to do so, having been ordered by the captor to remain at anchor and pick up his boats, pronounced for, upon a combination of all the circumstances of the case, notwithstanding a declaration of the commander of the vessel claiming as joint-captor but subsequent to the receipt of such orders, that the prize was not a slave ship, and no other union or association was proved. *The Sociedade Feliz, Joao de Souza Campos*, 2 W. Rob. 155.

107. *Quere*, How far a Queen's ship which was bound not to chase a slave vessel without an order from the senior officer of the station, and which, though it saw the prize at the commencement of the chase, remained at anchor, as it were by compulsion, in consequence of no such order having been given by the senior officer, the actual captor is on such account entitled to share as joint-captor. *Ibid.* 166.

*See antè, No. 71.*

##### 2. *Where fraud is charged against the actual captor in preventing the co-operation of the joint-captor.*

108. If a party claiming as joint-captor show that he would have been entitled as such had the seizure been made when it might and ought to have been, his interest will be sufficiently established. *The Galen, Rogers*, 1 Dodson, 433.

109. Claim of joint-capture by ships not in sight or actually chasing at the time of capture, allowed, on the ground that they would have been so had they not been misled by the captor extinguishing his lights to prevent them. *The Herman, Parlo*, cited in *The Waalesamheid, Van Nierop*, 3 C. Rob. 8.

110. Claim of joint-capture on the ground of being in sight, and of having been prevented from coming up to render assistance by the fraud of the actual captor in concealing his pursuit of the prize, rejected, the claimants having failed in proof of both facts; but expenses of claimants allowed out of proceeds. *The Robert, Paterson*, *Ibid.* 194.

111. Claim of joint-capture, on the ground that the claimants could and would have rendered effective assistance but for fraud of the actual captor in postponing the capture and extinguishing his lights to prevent the joint-captors chasing, pronounced for. Decision affirmed, with costs, in both Courts, on appeal by the actual captor. *The Bendraught, Beaufet*, Ibid., *Appendix No. 9. p. 35.*

112. Claim of joint-capture, on the ground that the actual captor had fraudulently postponed taking a prize for several hours, during which the asserted joint-captor, a King's ship, remained in sight and communicated by signals with the actual captor, in consequence of which postponement the reputed joint-captor bore away from the prize without affording any co-operation, and was out of sight at the time of capture, which occurred after dark, rejected (reversing the decision of the Vice-Admiralty Court at Jamaica). *The Minerva, Glen*, 2 Acton, 112.

113. Where the A. was in chase of a prize which it had followed all day, but in consequence of the B. appearing in sight, and wearing enemy colours for the time, the A. sheered off, and B. fired again, hoisted English colours, and became the actual captor, A., having come up immediately, *Held* entitled to share as joint-captor. *La Virginie, Coigneau*, 5 C. Rob. 124.

*See antè, No. 28., and post, Nos. 120, 121.*

3. *In cases of alleged non-assertion and disclaimer of interest at the time by the asserted joint-captor.*

114. Claim of asserted joint-captor, opposed by the actual captor on the ground of disclaimer of interest made at the time by the joint-captor to avoid responsibility for the capture, admitted, the Court holding such a disclaimer not to be sufficiently proved, but intimating that if it had been it would have operated as a bar to all claim by the joint-captor. *The William and Mary, Dickson*, 4 C. Rob. 381.

115. It is not a necessary ingredient in a title of constructive assistance that a person should be sent on board and a claim asserted immediately by the joint-captor, though it is a measure of great convenience and of proper precaution. Claim of joint-capture pronounced for, notwithstanding such an omission, but so much of captor's expenses as were occasioned by the joint-

captor's omission to assert an interest at the time of capture directed to be first deducted. *L'Amitié, Villeneuve*, 6 C. Rob. 268.

4. *On written admissions (inter alia) of the actual captor.*

116. A claim of joint-capture on behalf of a King's ship pronounced for, the being in sight and chase at the time of capture being proved by witnesses, and by an acknowledgment in writing held to be unimpeached, made, *recenti facto*, by the master of the vessel which was the actual captor. *The San Jose, De Sota*, 6 C. Rob. 244.

#### IX. RULES OF DISTRIBUTION IN CASES OF —

117. It is the invariable practice of the Prize Courts to hold joint-captors entitled to share according to their respective forces present at the capture. *The Zepherina, Lima*, 2 Hagg. 320.

118. The A. having sent her boats in search of a prize, from which they returned unsuccessful, leaving some men in another vessel, the B., who afterwards made the capture, the men so left *held* entitled to share in the prize as part of the crew *pro tempore* of B., but not as part of the crew of A. *La Belle Coquette, Andrieux*, 1 Dodson, 21.

#### X. PRACTICE IN CAUSES OF —

119. In a case of joint-capture of a slave vessel an allegation of the asserted joint-captor pleading sight and co-operation, but insufficiently to found the claim, directed to be reformed under suggestions thrown out by the Court, the circumstances of the case inducing a suspicion of a sufficient case to found the claim if rightly pleaded. *The Sociedade Feliz, Joao de Souza Campos*, 1 W. Rob. 303.

*See antè, No. 22. and Note 1.*

#### XI. COSTS IN CAUSES OF —

120. In a case of asserted joint-capture, grounded on a charge of misconduct of the actual captor not supported by proof, the captor *held* entitled to his costs. Claim of joint-captor pronounced against, and with costs accordingly. *L'Amitié, Villeneuve*, 6 C. Rob. 267.

121. A captor giving false information respecting the prize is liable to be visited



with costs. Part of the expenses of a joint-captor decreed accordingly to be paid by the actual captor in consequence of such misconduct. Under the circumstances, however, and to prevent injury to the other officers not implicated therein, the

condemnation in costs was afterwards revoked by the Court, and each party left to pay his own costs. *The Sparkler, Brown*, 1 Dodson, 362

*See ante*, Note 1. and No. 115.

### LAWS OF OLERON.\*

See the citations from the Laws of Oleron in *Godolphin's Adm. Jur.*

### LETTERS OF MARQUE.†

1. A letter of marque is forfeitable for cruelty, as for firing into the prize and killing a man after she has struck. The Prize Act lays down the law to this effect, but this is no more than a formal declaration of what was the ancient law of the Admiralty. *The Marianne, Morel*, 5 C. Rob. 9.

2. The act of Parliament requires that on granting letters of marque the captain and two sureties shall appear and give security, but on considerations of convenience, where the captain is absent, the practice of the Court permits some other person to appear for him. In such a case

a monition to show cause why the bail should not be forfeited having issued against the party who had appeared for the captain and against the two sureties, objection of such party that the captain was liable, and that, by his appearing for him, he did not bind himself personally, overruled, and the recognisances of the three parties forfeited. *The King v. Fergusson*, Edwards, 84.

3. Letters of marque and reprisal may be vacated in Chancery. *Rex v. Carew*, 3 Swan. 669., 1 Vern. 54.

See COURTS; DROITS OF ADMIRALTY.

\* 1. The Laws of Oleron are the ancient usages generally received, which Richard I., on his return from the Holy Land to Oleron, revised and approved for matters marine, and which all the people of the West afterwards received for those affairs. *Sir L. Jenkins*, vol. i. 87.

2. The Isle of Oleron belonged to the Duchy of Aquitaine, under the dominion of the Kings of England, when King Richard, on his return from the Holy Land in the fifth year of his reign, compiled the Laws of Oleron. *Godolphin's Adm. Jur.* 14.

† 1. See the provisions with reference to the granting, revoking, &c., of letters of marque contained in sects. 17. to 23., and also s. 58. of the 55 Geo. 3. c. 160. (the latest Prize Act, which, however, expired with the last war.)

2. With reference to the origin of letters of marque, it appears that if a foreign prince or state

seized or spoiled the goods of subjects of England, the King made reprisals upon the goods of the other's subjects within the realm, or enabled the party to whom the wrong was done, by letters of marque the goods of other subjects of the same state *mercere, retinere et appropriare quovaeque restitutio facta sit*. See 2 *Roll.* 114. 175. L. 20. (*per Coke*), 1 *Roll.* 175., 4 *Com. Dig.* 428. But a subject of the King cannot take the goods of the subjects of a Prince in amity with the King by force of letters of marque of another sovereign or state. 2 *Vern.* 592., 4 *Com. Dig.* 428.

3. As to the granting of letters of marque, see *Introduction to Godolphin's Adm. Jur.*; and see also 27 *E. 3. st. 2. c. 17.*, 4 *H. 5. c. 7*, 41 *Geo. 3. c. 76*.

4. Security is always taken on the grant of letters of marque, for the due observance of the conditions thereof, and that security is forfeitable on the transgression of those conditions. *Ibid.*

## LAW OF NATIONS.\*

1. In England the Law of Nations, of which the *lex mercatoria* is a branch, forms part of the Common Law, unless altered or controlled by statute or the Municipal Courts. *The Neptune, Cumberlege*, 3 Hagg. 140.

2. Reciprocity has always been considered as one of the leading principles of justice in questions arising between nation and nation. *The Girolamo, Guiranovich*, 3 Hagg. 185.

3. On the general principles of international law, if a contract be made abroad it may be expounded by the law of the country where it was made, or by the law of the country where it is to be executed; but where a remedy is sought to be obtained, the party seeking it must take it according to the law of that country in which it is to be enforced. *The Vernon, Gimblett*, 1 W.

Rob. 319.; *Fergusson v. Fyffe*, 8 Clark & Fin. 121.; *Don v. Lippman*, 5 Clark & Fin. 1.

4. A modern edict which does not appear cannot be presumed. The passing and production of a law is a satisfactory proof that no such law existed previously. *Le Louis, Forest*, 2 Dodson, 268.

5. No nation can privilege itself to commit a crime against the Law of Nations by a municipal regulation of its own. *Ibid.* 251.

6. A declaration of persons, however eminent, assembled in congress, cannot overrule the established course of the Law of Nations. *Ibid.* 252.

7. It is not competent to one nation to add to the Law of Nations by its own arbitrary ordinances without the concurrence of other nations. *Pollard v. Bell*, 8 T. R. 434., 2 Park on Ins. 731.

\* 1. See on this head the works of *Francis de Victoria (Relectiones Theologicae)*, *Balthazar Ayala*, *Conrad Brunus*, *Albericus Gentilis*, *Loccenius*, *Grotius*, the *Consolato del Mare*, the *Laws of Oleron*, the *Waterrecht of Wisbuy*, *Hobbes*, *Puffendorf*, *Leibnitz*, *Spinosa*, *Zouch*, *Sir Leoline Jenkins*, *Selden*, *Rachel*, the *Marine Ordinance of Louis XIV.*, *Valin*, *Heinecius*, *Wolf*, *Bulsius*, *Vattel*, *Montesquieu*, *Bynkershoek*, *Rutherford*, *Barbeyrac*, *Hubner*, *Emerigon*, *Moser*, *Martens*, *Gunther Jakobsen*, *Lampredi*, *Galiani*, *Azuni*, *Lord Liverpool*, *Robinson's Collectanea Maritima*, *Pothier*, *Schlegel*, *Madison*, *Mackintosh*, *Ward*, *Croke*, *Chitty*, *Eden*, *Evans*, *Manning*, and *Story*, and see also *Wheaton's Law of Nations* (ed. 1845), in which most of these authors are referred to and their works enlarged upon.

2. The Law of Nations is a system of rules established by universal consent among the civilised inhabitants of the world. As none of these states will allow a superiority in the other, neither can dictate or prescribe the rules of this law to the rest, but such rules must necessarily result from those principles of natural justice in which all the learned of every nation agree, or they depend upon mutual compacts or treaties between the respective communities, in the construction of which there is also no law to resort to but that of nature and reason, being the only one in which all the contracting parties are equally conversant, and to which they are equally subject. In England, the Law of Nations, wherever any question arises which is properly the object of its jurisdiction, is

adopted in its full extent by the Common Law, and held to be the law of the land. 4 *Stephens' Black. Com.* 241.

3. The civil law observes that *quod naturalis ratio inter homines constituit vocatur jus gentium*. *Inst.* 121., 1 *Stephens' Black. Com.* 25.

4. The Law of Nations is the great source from which are derived those rules respecting belligerent and neutral rights, which are recognised by all civilised and commercial states throughout Europe and America. This law is in part unwritten and in part conventional. To ascertain that which is unwritten, resort is had to the great principles of reason and justice; but as these principles will be differently understood by different nations under different circumstances, they are considered as being in some degree fixed and rendered stable by a series of judicial decisions. The decisions of the courts of every country, so far as they are founded upon a law common to every country, will be received, not as authority, but with respect. The decisions of the Courts of every country show how the Law of Nations, in the given case, is understood in that country, and will be considered in adopting the rule which is to prevail in the United States. *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch's (AMERICAN) Rep. 191.

5. Every man is a party to the public authoritative acts of his own government, and cannot make the consequences of such acts the foundation of a claim to indemnity. 1 *Park on Ins.* 176.

## LICENCES.

## I. OF THE GRANT OF — 195.

## II. OF THE CONSTRUCTION AND EFFECT OF — 196.

1. *Generally*, 195.
2. *As to the performance of the conditions thereof*, 197.
3. *As to the parties entitled to be considered as the nominees thereof*, 197.
4. *Where the terms thereof are sufficient to protect enemy interest — et contra*, 198.
5. *Where used for the ships of another country than that for which they were granted*, 200.
6. *How affected by a change in the national character of the nominees*, 200.
7. *How affected by a misdescription of the nominees*, 200.
8. *Where assigned by the nominees*, 201.
9. *How affected, as to neutrals, by the existence of partial enemy interest*, 201.
10. *Where the date or grant thereof is posterior to the commencement of the voyage*, 201.
11. *Where the date or grant thereof is posterior to the capture*, 201.
12. *Where the time therein limited had expired*, 201.
  - (a) *Generally*, 201.
  - (b) *At the time of capture*, 202.
  - (c) *Where a new licence had been obtained, but was not on board*, 202.
  - (d) *In licences to export*, 202.
13. *As to the port of shipment*, 203.

14. *As to intermediate and interdicted ports*, 203.

15. *As to the port of destination*, 204.

16. *How affected by a contingent ulterior destination*, 204.

17. *As to the return voyage*, 204.

18. *Other cases*, 204.

## III. OF THE CONSTRUCTION AND EFFECT OF — AS TO CARGO, 205.

1. *In cases of British property on board enemy vessels disguised as neutrals, and having a British licence*, 205.
2. *Where cargo is taken, the licence directing to proceed in ballast*, 205.
3. *Where part of the cargo is not enumerated in the licence*, 205.
4. *Where there is an excess of cargo*, 206.
5. *As to return cargoes*, 206.
6. *As to substituted cargo*, 206.
7. *Where the cargo licensed is shipped in two vessels*, 206.

## IV. WHAT CIRCUMSTANCES WILL VITIATE — ET CONTRA, 207.

1. *Fraud*, 207.
2. *Purchase of* — 207.
3. *Alterations in* — 207.
4. *Carriage of contraband*, 207.
5. *Carriage of enemy correspondence*, 207.
6. *Other circumstances*, 207.

## V. OF THE ONUS OF PROOF OF — 208.

1. *Generally*, 208.
2. *Where lost*, 208.

## VI. MISCELLANEA.

## I. OF THE GRANT OF — \*

1. The King may license a trading with the enemy generally, or grant a qualified licence. *Vandyk v. Whitmore* (1801), 1 East, 475.; *Vanharthals v. Halked*, Ibid. 487. n., 1 Park on Ins. 511.

2. The Crown cannot control a statute, even by its licence. *Toulman v. Anderson*, 1 Taunt. 227.

*See ALIENS, cap. III. sect.*

4. *div. (a).*

\* 1. In the course of the late war, the conflicting relations in which the different states of Europe were placed towards one another, by the overruling power of France, rendered it necessary for the interests of Great Britain that the prerogative of granting licences should be frequently called into exercise. Acts of parliament were also passed by which powers were given, during the war, to the King in Council, and to the Secretary of State, to a greater extent than the King's prerogative was alone sufficient to authorize; and, in particular, of granting in certain conjunctures dispensations from the Navigation Laws, which being the statutes

of the realm, could not be encroached upon by the unassisted prerogative of the Crown, see *Shiffner v. Gordon*, 12 East, 296., 1 Acton, 223., statutes 48 Geo. 3. c. 37. s. 3., 48 Geo. 3. c. 153. ss. 15, 16., 45 Geo. 3. c. 34., 4 Geo. 3. c. 3. s. 47 Geo. 3. c. 37. s. 2., 49 Geo. 3. c. 60., 49 Geo. 3. c. 25. The licences so issued were in general granted to British subjects, but sometimes to alien enemies, and generally for certain voyages, either to or from an enemy's country; either to export commodities with which the British markets were overstocked, or to import such articles as they stood in need of. 15 *Petersdorff's Abr.* 105. n.

## II. OF THE CONSTRUCTION AND EFFECT OF —

### 1. Generally.\*

3. Licences to trade with the enemy are high acts of sovereignty, and therefore *stricti juris*, and not to be carried farther than the intention of the great authority which grants them may be supposed to extend. *The Cosmopolite*, Mathieson, 4 C. Rob. 8.; *The Jonge Johannes*, Parlerliet, Ibid. 263.; *The Vriendschap*, Goverts, Ibid. 96.

4. Licences to trade with the enemy being matters of special indulgence, the application of them is in general *strictissimi juris*, but the extended system of licences rendered necessary by the measures of the enemy against the commerce of this country changed their character, and rendered them entitled to be viewed with the utmost liberality of construction. As a general rule, therefore, where no fraud has been meditated or committed, and the parties have been prevented carrying the licence into literal execution by a power which they could not control, they will be entitled to the benefit of its protection, although the terms may not have been literally and strictly fulfilled. *The Goede Hoop*, Pieters, Edwards, 329. 332.; *The Vrow Cornelia*, Dykstra, Ibid. 350.; *The Johan Pieter*, Schwartz, Ibid. 354.

5. Where there is clear *bona fides* in the holder the Court, though it will not contravene the terms of a licence, will give it the most liberal construction. *The Goede Hoop*, Pieters, Ibid. 333.

6. The Court will apply the most favourable interpretation to the construction of licence cases where there is a total absence of *mala fides*, and where unavoidable obstacles have been thrown in the way of an exact compliance with the terms prescribed, but *aliter* where there is *mala fides*, or a departure from the terms beyond the necessity imposed. *The Dankbarkeit*, Forbeck, 1 Dodson, 187.

7. Licences to trade with an enemy are to be construed liberally, and not strictly, like grants of property from the Crown. *Flindt v. Scott*, and *Same v. Crockett*, 5 Taunt. 674., 15 East, 525.

8. Two circumstances are required to give due effect to a licence; first, that the intention of the grantor shall be pursued; and secondly, that there shall be an entire *bona fides* on the part of the user. Whatever the grantor did not mean to permit is absolutely interdicted, and the party who uses the licence engages not only for fair intention but for an accurate interpretation and execution. *The Cosmopolite*, Mathieson, 4 C. Rob. 13.

9. When Government grants a licence it must be supposed to grant all that is necessary to carry it into effect. *The Clia*, alias *William Pitt*, Schaken, 6 C. Rob. 70.

10. A licence, legalising a particular adventure, incidentally authorizes all the measures necessary to be adopted for its due and effectual prosecution. *Kennington v. Inglis* (1807), 8 East, 273.

11. Where a description of trading with an enemy's country is licensed which would otherwise be illegal such commerce must be regarded as legal, with all the consequences of its being legal. *Usparicha v. Noble*, 13 East, 332.

12. The fair construction of a licence continues the same, notwithstanding a subsequent Order in Council may effect a material alteration in permissive trade generally. *The Hendrick*, Hansen, 1 Action, 322.

13. Where the terms of a licence are general, it is of no consequence who are the individuals acting under it, provided they comply with the conditions thereto annexed. *The Acteon*, Rogers, 2 Dodson, 52.

14. Where an agent, on obtaining a licence, did not represent to the Privy Council that he applied on behalf of a hostile trader, the concealment *Held* not to vacate the licence or vitiate the policy.

\* 2. Much contrariety of opinion has existed as to the construction of licences, and in particular whether to any and what extent operating to remove the personal disabilities of alien enemies interested in the property. The grant of licences being a high act of sovereignty, care must be taken that the licence is not extended beyond the intention of the power from which it emanates; and that it is not by too great a latitude of interpretation made auxiliary to the purpose of fraud: but subject to this limitation, the rule is, that the licence shall receive a liberal construction to effec-

tuate the purpose for which it was intended, and that the terms which it contains are not to be limited in construction where the adventure contemplated has been fairly pursued. It should be remembered that the licence is granted, not so much for the benefit of the individual upon whom it is conferred, as for the promotion of the national interest; and the strictness of interpretation which may be applicable in the case of a grant of property from the Crown, cannot be exercised towards such an instrument. 15 *Petersdorff's Abz.* 105. n.

*Flindt v. Scott*, and *Same v. Crockett*, 5 Taunt. 674., 15 East, 525.

15. A licence given to a person who has not even a qualified property is of no avail. *Feize v. Waters*, 2 Taunt. 248.

16. A licence granted during hostilities which are at an end cannot apply in a war that is to be considered a totally new and different war. *The Planters Wensch, Toll*, 5 C. Rob. 22.

2. *As to the performance of the conditions thereof.\**

17. If a licence contain a condition, it must be performed in order to make it available. *Vandyck v. Whitmore* (1801), 1 East, 475.; *Morgan v. Oswald*, 3 Taunt. 554.; *S. P. Vanharthals v. Halked*, 1 East, 487. n. And not colourably merely. *Shiffrer v. Gordon* (1810), 12 East, 302.

18. The material conditions of a licence must be strictly complied with, and it is the duty of the Court of Admiralty to sustain such conditions. It will, however, where the transaction is *bona fide*, lean to uphold the licence; but it cannot give relief in cases of gross error. *The Anna Maria, Wolgahayer*, 1 Dodson, 209.

19. An enemy has no right to trade with the ports of this country except by special permission of the Government, with the conditions of which permission he must strictly comply, unless prevented by the pressure of an irresistible necessity. Where such conditions are departed from, the character of enemy revives, and his property is subject to confiscation. *The Manley, Hansen*, 1 Dodson, 259.

20. The violence of a hostile Government cannot privilege persons to act in contravention of the essential terms of a British licence. Such plea of compulsion is inadmissible. *The Seyerstadt, Erbe*, Ibid. 241.

21. A licence held to be invalidated in consequence of one of the conditions thereof, viz. to touch at a given port for convoy, having been violated without necessity shown. *The Europa, Sundberg*, Edwards, 358.; *The Minerva, Davidson*, Ibid. 375.

22. Licence to a vessel to come from the Baltic to the port of London, on condition of her proceeding from her port of lading to Leith, there to take convoy,

would not enure to the protection of a vessel placing herself under British convoy at Wingo Sound, and proceeding from thence direct to the port of London, though no *mala fides* be imputed to her; but a passport from a British Admiral, permitting such a departure from the terms of the licence, Held a sufficient justification. Ship and cargo restored accordingly. *The Anna Maria, Wolgahayer*, 1 Dodson, 209.

23. If it be provided in a licence that the party acting under it shall give bond for the due exportation to the places proposed of the goods intended to be exported, and they are exported without such bond being given, such exportation is illegal, and the owners cannot recover on a policy to protect the goods. *Vandyck v. Whitmore*, 1 East, 475.

24. A licence was granted for the exportation of gunpowder, on the petition of the manufacturer on behalf of himself and others, provided the merchant exporter should first give a security by a bond, with two sureties, under a certain condition. The manufacturer of the powder sold it to the plaintiff, and contracted to ship it free on board: Held, that the condition of this licence was not complied with by the manufacturer's giving the required security, as he was not the merchant exporter within the meaning of the licence. *Camelo v. Britten*, 4 B. & A. 184.

25. A licence having been deposited in the Custom House and accidentally destroyed, it is to be presumed that the time of clearance, as required by the Order in Council, was endorsed upon it, upon its being shown that, without such endorsement, the Custom House would not have permitted the entry to have been made. *Butler v. Allnutt*, 1 Stark. 222. (Ellenborough.)

3. *As to the parties entitled to be considered as the nominees thereof.*

26. The petitioner for a licence is not necessarily the nominee, unless described as such in the licence. *The Hendrick, Hansen*, 1 Acton, 322.

27. A licence to export goods to certain places within the influence of the enemy, interdicted to British commerce, granted to H. N. on behalf of himself and other

\* 3. The conditions on which a qualified licence is granted must be strictly complied with. 1 *Park on Ins.* 512. 514.

British merchants, &c., is sufficient to legalise an insurance on such an adventure, if it appear that H. N. was the agent employed by the British merchants really interested in it to get the licence, though he had no property in the goods himself. *Rawlinson v. Jansen*, 12 East, 223.

28. A licence to trade with an enemy, granted to F. & Co. and others, may be used by the person for whom F. & Co. were the acting agents in procuring such licence and in carrying on the adventure, though the person be a foreigner residing here under an alien licence at the time. *Feize v. Newnham*, 16 East, 197.

29. A licence to A. B. of London, merchant, on behalf of himself and other British or neutral merchants, to import a cargo from certain limits within which an enemy's port is situate, in any vessel bearing any flag except the French, will protect a ship trading from that port, in which ship A. B. and an alien enemy are jointly interested. *Hagedorn v. Reid*, 1 M. & S. 567., 3 Camp. 377.

30. A licence "to A., his agents, or bearers of his bills of lading," to import a cargo from the enemy's country, *Held* not to protect such an importation to other parties not the agents of A. or bearers of his bills of lading, but to whom A. was agent, though the utmost innocence of intention appeared on the part of the claimants. *Condemnation. The Jonge Johannes, Purleriet*, 4 C. Rob. 263.

31. If a licence be obtained from the British Government by A., a merchant, to import from an enemy's country, in six ships, such goods as should be specified in his bills of lading, and goods be imported on board one of the six ships on account of B., C., and D., to whom separate bills of lading are sent for their respective goods, and one general bill of lading for the whole cargo be sent to A., the whole cargo will be protected. *Defflis v. Parry*, 3 B. & P. 3.

32. But it is otherwise if the licence be expressly granted for the exportation of goods, as being the property of the persons to whom it is granted. *Feize v. Thompson*, 1 Taunt. 121.

33. So where the goods licensed were, by the terms of the licence, to be "the property of T. B. & Sons, as specified in their bills of lading," *Held*, that the goods were not protected by a general bill of lading consigned to Messrs. Baker, who possessed not even a qualified property, absolute bills of lading being transmitted

to other persons as the particular consignees. *Feize v. Waters*, 2 Taunt. 248.

*See post*, Nos. 108. 140.

*And see the next section.*

4. *Where the terms thereof are sufficient to protect enemy interest — et contra.*

34. Cargo imported on account of an enemy *held* not to be protected by a general licence. *The Josephine, Chilton*, 1 Acton, 313.

35. The words "to whomsoever the property may appear to belong," when introduced into a licence, are *held* to exclude all inquiry into the proprietary interest, and therefore to protect enemy property; but, in a case in which they were not inserted, enemy property *held* not protected by it, and condemned accordingly. *La Cousine Marianne, Deboer*, Edwards, 346.

36. Under a licence to British brokers resident here, that a ship bearing any flag may import from an enemy's country, "to whomsoever the property may appear to belong," three British subjects not named in the licence, one of whom resides in a hostile country, may import from another hostile country to this. *Fayle v. Bourdillon*, 3 Taunt. 546.

37. A licence to F. & Co., obtained by them as the plaintiff's agents, permitting them to export, in a ship named, bearing any flag except the French, specified goods from London to Dantzic, or any port in the Baltic not blockaded, though the documents might represent her destination to any neutral or hostile port, and to whomsoever the property might appear to belong, protects a consignment made by a Prussian neutral alien, resident here by licence under the Alien Act, to a hostile Russian port of the Baltic; and the plaintiff, having insured, may recover for a total loss occasioned by the act of the Government of Prussia, the country of which he was a native, by seizure in a Prussian port, whither the ship was driven by stress of weather. *Schnakoneg v. Andrews*, 5 Taunt. 716.

38. The terms of a licence, authorizing the importation of Spanish wool under 39 Geo. 3. c. 98., to A. B., importer, and holder of the bills of lading, *Held* not to exempt him, claiming under such licence, from negating enemy interests in his claim. Claim directed to be amended accordingly. *The Bervise Van Koningsberg, Shemills*, 2 C. Rob. 169.

39. A licence granted, under an Order in Council, to H. S. (a British resident

merchant), permitting a vessel bearing any flag except the French to proceed in ballast from any port north of the Scheldt to Archangel, there to load a cargo of such goods as are permitted by law to be imported, and proceed with the same to a port in the United Kingdom, was considered as not confined personally to H. S. or any particular class of persons; and therefore, where Russian subjects at Archangel, who were alien enemies, had shipped goods under such licence for the purpose of being brought into this country, it was *held*, that they were protected by it, and an insurance made for their benefit was legal. *Robinson v. Touray*, 1 M. & S. 217., 3 Campb. 160.; *S. P. Robinson v. Cheesewright*, 1 M. & S. 220.

40. A licence to H. S., a British merchant, for a ship to proceed to a hostile port and bring home a cargo of goods, authorizes the importation of such goods being the property of an alien enemy, a subject of that hostile country. *Morgan v. Oswald*, 3 Taunt. 554.

41. An importation from a hostile port, by an alien enemy there resident, may be legalised by a licence to R., on behalf of a British merchant, for a ship not named; but, in order so to legalise it, it is not sufficient that the ship's name should be endorsed, at the hostile port of loading, on the licence; the assured must also prove by what authority he applies the licence so obtained to that adventure. *Robinson v. Morris*, 5 Taunt. 730.

42. Under a licence to a British merchant by name, on behalf of himself and others, to export to P. and to import a cargo thence, an alien enemy may lawfully be interested in the export cargo as well as in the import cargo. *Feise v. Bell*, 4 Taunt. 4.

43. A licence granted upon the representation of W. V., on behalf of different British merchants, for a ship, specifically named therein, to proceed, under any colours except the French, with a cargo of such goods as were permitted by an Order in Council to be exported from London to any ports within certain limits, the whole of the country within those limits being in hostility with this country, *Held* to protect the property of an alien enemy, residing in the hostile country, shipped on his account in this country. *Hullman v. Whitmore* and *Same v. Scott*, 3 M. & S. 337.

44. A licence to C. & H. (shipbrokers in London), on behalf of themselves and

British or neutral merchants, to load and export a cargo, on board a Russian ship, from London to any port in the Baltic not under blockade, *Held* to protect Russian property exported from this country on a voyage to a Russian port, Russia being at war with Great Britain. *Rucker v. Annesley*, 5 M. & S. 25.

45. Whether or not a licence under the stat. 48 Geo. 3. c. 126. to G. & F. of London, merchants, on behalf of themselves and others, to export on board a certain vessel, bearing any flag except the French, a cargo of British manufactures and colonial produce from London to Archangel, and to import from thence a cargo on board the said ship of such goods as may lawfully be imported, would warrant an exportation of the goods licensed by a Russian purchaser here, Russia being then hostile; at all events, if such Russian owner and alien enemy insure the goods on the voyage from London to Archangel, and they be seized and condemned by his own Government upon their arrival, he cannot recover. *Flindt v. Scott*, 15 East, 525., 5 Taunt. 674.

46. A licence granted by the Secretary of State under an Order in Council, by virtue of the stat. 48 Geo. 3. c. 126. s. 2., to P. B. & C. (who were in fact British merchants residing here, but were not so expressed to be in the licence), on behalf of themselves and others, to export goods on board a certain vessel, bearing any flag except the French, from London to any port in the Baltic (of which most were at that time hostile, but some were neutral), will not warrant an exportation of goods the property, at the time of the shipment, of an alien enemy, a Russian subject residing at St. Petersburg, then a hostile port of the Baltic, to which place the cargo was consigned, and at whose desire the licence was obtained by P. B. & C. *Mennett v. Bonham*, 15 East, 477.

47. A licence to A. & B. (British merchants residing in this country) to export goods in a certain ship to any port in the Baltic not blockaded, and to whomsoever the property might appear to belong, *Held* insufficient to protect the property of enemies shipped from hence to an enemy's port, some ports of the Baltic being neutral at the time, though most of them were hostile. *Flindt v. Crockett*, 15 East, 522.; but see *S. C.* 5 Taunt. 674.

48. A licence granted to A. & B., on behalf of themselves and other British or neutral merchants, for a vessel to sail in

ballast from London to Holland (then in a state of hostility with this country), notwithstanding any thing contained in his Majesty's Order in Council of 26th April, 1809 (placing certain ports of Holland under blockade), *Held* not to protect a ship the property of an alien enemy, the licence being construed to dispense with the effect of the Order in Council only, but not to remit the other belligerent rights of the Crown. *Grigg v. Scott*, 4 Camp. 339., 1 Holt, 129.

49. Goods shipped in an enemy port to A., an Irish merchant, under a licence, but the bills of lading of which were, before the ship sailed, altered to the order of the shippers, condemned as enemy property, the Court holding that the property, in consequence of the alteration of the bills of lading, was not divested out of the hands of the enemy shipper, nor protected by the licence, the terms of which required that such goods should be the property of, and imported by, A. *The Aurora*, *Lindberg*, 4 C. Rob. 218.

5. *Where used for the ships of another country than that for which they were granted.*

50. It is not a very essential deviation if the ships of other countries than those designated in the licence have been employed, provided the different countries have the same political bearing towards this kingdom. *The Daukbarkeit*, *Forbeck*, 1 Dodson, 187.

51. A licence for importation on board a neutral ship cannot afford protection if the vessel be British property. Condemnation. *The Jonge Arend*, *Knowles*, 5 C. Rob. 14.

52. A licence for a foreign ship will not protect one that is in fact and in appearance British; but where the ship bears every appearance of being foreign, the Court will not, no fraud being apparent, inquire whether there is any British interest, notwithstanding a declaration of the master raising a presumption thereof. Restitution on payment of captor's expenses. *The Gute Hoffnung*, *Steffins*, 1 Dodson, 251.

53. A licence to a vessel described as an American ship, to export a cargo to San Lucar, a port of Spain (an ally), in the

possession of the French (enemies), and import one from thence to London, *Held* sufficient to protect a ship which had been originally an American vessel, but had been condemned, and was at the time British owned; such fact not having been disassembled, nor any fraud on the British Government intended. Restitution on payment of captor's expenses. *The Bennet*, *Younghusband*, *Ibid.* 181.

54. Licence for a neutral vessel will not enure for the protection of an enemy's vessel, more especially where there is *mala fides* in the transaction. Condemnation. *The Daukbarkeit*, *Forbeck*, *Ibid.* 191.

55. Licence to sail under any flag except the French, *Held* to exclude French ownership. Condemnation of ship accordingly, as being French (enemy) property. *The Bourse*, *alias Gute*, *Erwartung*, *Edwards*, 370.

56. Such a licence *Held* to protect the property of persons in countries unexpectedly annexed to France while engaged in British commerce. *The Jonge Clara*, *Ibid.* 371.

6. *How affected by a change in the national character of the nominees.*

57. A licence to a British merchant to import cannot be extended to protect shipments made by him in person in an enemy's country as a merchant of that country. *The Jonge Klassina*, *Bol*, 3 C. Rob. 297. And see *Ex parte Baglehole*, 1 Rose, 271., 18 Ves. jun. 525.

7. *How affected by a misdescription of the nominees.\**

58. A misdescription of a party applying to the Crown for a licence to trade with an enemy, if made without fraud, does not vacate the licence or vitiate a policy effected on it. *Vaughan v. Lemecke* (in error), 7 D. & R. 236., 8 Moore, 646., 1 Bing. 473. overruling *Klingender v. Bond*, 14 East, 484.

59. As where he was described to be "of London, merchant," whereas he was resident at the time at Heligoland, from whence he passed into Germany, intending to return immediately and settle in London. *Ibid.*

\* 4. A misdescription of the party to whom the licence is granted will not invalidate the licence

if the conditions be strictly complied with. 1 *Park on Ins.* 513.



8. *Where assigned by the nominees.*

60. A licence from the King to J. B. to import in neutral ships from an enemy's country goods, being the property of J. B., cannot be assigned so as to authorize the importation of goods the property of the assignee. *Feise v. Thompson*, 1 Taunt. 121.; *Feise v. Waters*, 2 Taunt. 248.

9. *How affected as to neutrals, &c. by the existence of partial enemy interest.*

61. Although a licence to the plaintiff, of London, merchant, on behalf of himself and other British and neutral merchants, to export on board a certain vessel, bearing any flag except the French, a specified cargo from London to any port in the Baltic not under blockade, and to whomsoever the property may appear to belong, was *Held* not to protect a part of the cargo, which was the property of Russian subjects at the time of the shipment, Russia being then at war with this country, so as to entitle the plaintiff to recover in respect of that part on a policy effected by him as the agent for and by the orders of those Russian subjects, the loss being occasioned by seizure and confiscation in a Russian port by Commissioners appointed by the Russian Government; yet, as the licence was also obtained and the policy effected by the plaintiff on his own account and as agent for certain Hamburgers who were respectively interested in separate and distinct proportions of the cargo, *Held*, that the plaintiff was entitled to recover in respect to his own interest and that of the Hamburgers, Hamburg being in a state of permissive neutrality with this country. *Hagedorn v. Buzett*, 2 M. & S. 100.

10. *Where the date of grant thereof is posterior to the commencement of the voyage.*

62. A prospective licence from the Crown for a voyage from an enemy's country, granted after the voyage has commenced, is sufficient to render it legal. *Henry v. Stainforth*, 4 Camp. 270. (Ellenborough.)

11. *Where the date of grant thereof is posterior to the capture.*

63. To give protection, the existence of a licence at the time of capture must be presumed. *The Vrow, Deborah*, 1 Dodson, 167.

64. A licence does not act retrospectively, and cannot take away an interest vested in law in the captors. *Ibid.*

65. A licence not granted until after the fact of capture, although bearing date anterior thereto, *Held* insufficient to afford protection. Ship and cargo condemned accordingly. *Ibid.* 160.

66. A licence obtained subsequently to the date of the capture, *Held* to furnish no protection. *The St. Ivan, Wacklin*, Edwards, 377.

12. *Where the time therein limited had expired.*

(a) *Generally.*

67. A party using his best endeavours to fulfil his engagement in his licence, but being prevented by the enemy from doing so within the time therein required, *Held* to be entitled to the benefit of the licence, notwithstanding its expiration and the refusal of Government to renew it. Restitution accordingly. *Æolus, Myenne*, 1 Dodson, 302.

68. A licence legalises the prosecution of the intended adventure after the time specified in the licence has expired, if the delay be caused by unavoidable necessity, whether the voyage protected commence after the licence expired or before. *Effurth v. Smith*, 5 Taunt. 329.; *Siffkin v. Glover*, 4 Taunt. 717.

69. Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage be *bond fide* begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident, over which the assured have no control. *Groning v. Crockett*, 3 Camp. 83. (Ellenborough.)

70. If a licence to trade be limited in duration to a certain day, and the vessel have not completed her voyage before the licence expires, it is incumbent on the plaintiff to prove that such due diligence has been used by the master of the vessel as that the adventure is still protected within the spirit of the licence. But if there has been no default in the conduct of the vessel, the licence, though expired, still protects the adventure till its completion. *Freeland v. Walker*, 4 Taunt. 478.

71. A voyage legalised in its commencement by a licence for four months, which expired during the voyage, may be legally finished if special circumstances, not in the power of the licensed person to

control, clear of fraud and laches on his part have protracted the voyage; but it is incumbent on the assured to prove the special circumstances, though it is not necessary that the ultimate port of discharge of a licensed ship should be specified in her clearance from Great Britain. *Leevin v. Cormac*, Ibid. 483. n.

72. A licence had expired in consequence of an embargo in the enemy's port; on proof of the identity of the transaction, it was *Held* to be a subsisting licence, though after the Government had ceased to grant such. Restitution. *The Johan Pieter, Schwartz*, Edwards, 355.

73. A licence was granted to the plaintiff on the 25th of May, 1810, to take a cargo from London to Archangel, and return from thence with a cargo of grain and other goods permitted by law to be imported to any port of the United Kingdom. The licence was limited to the 29th of September following, which time was afterwards extended to the 1st of January, 1811. The ship, after taking in a cargo of pitch and tar at Archangel, sailed on her homeward voyage on the 13th of October, 1810, but was driven back to Archangel, and there unloaded, her cargo sold, and the ship laid up for the winter; she sailed again from thence with a cargo of wheat on the 1st of August, 1811; *Held*, that the licence was not exhausted by taking in the first cargo of pitch and tar, but would cover the cargo of wheat also, notwithstanding the time limited for its continuance had elapsed, provided it appeared that the voyage was prosecuted with all reasonable dispatch. *Siffkin v. Allnut*, 1 M. & S. 39.

74. An insurance for a voyage is valid, notwithstanding the licence was limited to be in force until the 29th of September, and the ship did not sail from the foreign port till the 4th of October; it appearing that the goods were loaded on board by the 12th of September, and the adventure was then *bonâ fide* prosecuting under the licence, and the policy attaching at and from her loading port. *Schroeder v. Vaux*, 15 East, 52., 3 Camp. 84. n.

*See post*, Nos. 126, 127.

(b) *At the time of capture.*

75. A vessel bringing a cargo to this country under the protection of a licence is not on her return voyage liable to capture, though such cargo was delivered after the expiration of the licence. Restitution

accordingly, and captors' expenses refused. *The Freundschaft, Kock*, 1 Dodson, 316.

76. A vessel homeward bound on a voyage under the protection of a licence is not liable to condemnation whilst proceeding on such voyage after the expiration of the licence. *The Acteon, Rogers*, 2 Dodson, 53.

77. A licence which had expired six weeks prior to the capture, *Held* to protect the holder, no proof being adduced of fraud on his part, and it having been shown that the ship had been detained in the port of shipment by an embargo and subsequently by contrary winds. Restitution accordingly. Captors' expenses allowed. *The Goede Hoop, Pieters*, Edwards, 327.

78. Licence for importation of cargo of corn *Held* sufficient to protect the cargo notwithstanding its having expired two months prior to the capture, the delay in the shipment having been satisfactorily explained, and such cargoes being under the circumstances entitled to the peculiar indulgence of the Court. Restitution, with captors' expenses. *The Sarah Maria, Marstrand*, Edwards, 361.

79. A British-owned ship having a licence on board permitting the voyage, seized and proceeded against, the voyage not having been completed within the term limited by the licence owing to detention by the enemy's privateers from a suspicion of having a British licence on board, and to her subsequently deviating from her regular course to obtain provisions, restored together with her cargo (reversing the decision of the Vice-Admiralty Court of New Providence), notwithstanding the time limited in the licence had expired, and the date of the licence appeared to have been altered, though without the master's knowledge. *The Diana, Ledesma*, 2 Acton, 54.

(c) *Where a new licence had been obtained but was not on board.*

80. A ship was captured proceeding to the port of shipment in ballast, her licence having expired, but with an indorsement setting forth that a new licence had been obtained and would be applied to this vessel on her arrival at the port of shipment. The facts being so, restitution decreed on payment of captors' expenses. *The Carl, Berlin*, Edwards, 339.

(d) *In licences to export.*

81. There is a difference between a licence to export and a licence to import. The former, if the time elapses, must be

renewed, because the parties being at home can easily apply to renew. *Williams v. Marshall*, 6 Taunt. 390., 2 Marsh, 92., 1 Moore, 168., 7 Taunt. 468.

82. If a licence to export and deliver goods to an enemy's country be granted for a limited time it is not sufficient that the goods were shipped before the expiration of the time, the ship not sailing till afterwards. *Vandyck v. Whitmore*, 1 East, 475.

83. A vessel is not protected under a licence for six months, which was to be renewed on application by the parties on the return of the vessel from her voyage, if it appear that the licence expired on the 2d January and that the ship cleared at the Custom House on the 19th December preceding, but did not receive her clearance at Gravesend till the 20th January, being detained by the exporter, who feared a capture by French privateers. *Tulloch v. Boyd*, 1 Moore, 174., 7 Taunt. 472., Holt, 487.

84. A licence to export to a hostile country was to continue in force for exporting till the 10th September. The ship cleared at the Custom House on the 9th September, and on the 12th received her clearing-note at Gravesend. *Held* that the ship had not exported the cargo before the 10th, and that the insurance was void. *Williams v. Marshall*, 6 Taunt. 390., 2 Marsh, 92., 1 Moore, 168., 7 Taunt. 468.

85. If the date be endorsed as the 17th and the real date of the clearance be the 20th, *Semle*, that is a substantial compliance with the condition of a licence. *Morgan v. Oswald*, 3 Taunt. 554.

### 13. *As to the port of shipment.*

86. A licence *Held* to be vitiated by changing the port of shipment. *The Twee Gebroeders, Jans*, Edwards, 95.

87. A licence to bring a cargo to this country will be sufficient to protect the vessel on her voyage to the port of shipment in ballast, but the clearest proof of destination to such port and for such purpose is necessary. Condemnation in such a case on failure of proof of such a destination with such a purpose. *The Cornelia, Roose*, Edwards, 360.

88. A licence to import direct from any port in Norway, or to sail in ballast from any port north of the Scheldt to any port in Norway, and in either case to import from thence, authorizes by the first clause a sailing from a British port whether north

or south of the Scheldt to Norway to fetch the cargo. *Le Cheminant v. Pearson*, and *Same v. Allnutt*, 4 Taunt. 367.

89. A licence authorizing a ship to sail from any port with a cargo will not authorize her to sail from a blockaded port with a cargo taken in there. A blockaded port shall be taken as an exception to the general description in the licence, unless its exemption be specially designated therein. *The Byefield, Forster*, Edwards, 190.

90. A licence to import Spanish wool from Holland dated on the same day as the notification of the blockade of Holland, *Held* to permit such an importation notwithstanding the blockade. *The Hoffnung, Berens*, 2 C. Rob. 162.

91. In 1810, it was lawful for a Ham-burgher to bring goods to this country from a hostile port under strict blockade. *Pieschell v. Allnutt*, and *Same v. Lavie*, 4 Taunt. 792.

*See post*, Nos. 114, 115, 129.

### 14. *As to intermediate and interdicted ports.*

92. A vessel cannot be permitted to touch at an intermediate port for orders under a licence for a direct voyage to this country. This rule the Court has rigidly adhered to, except in cases where the vessel has quitted the intermediate port with the identical cargo she carried in and was actually proceeding for England at the time of capture. *The Frau Magdalena, Hansen*, Edwards, 367.

93. Vessels with licences to this country are prohibited from going into any interdicted port for orders, but in a case in which it was not shown to have been known at the port of shipment, and at the time of shipment, that the port subsequently touched at was an interdicted port, the Court decreed restitution. *The Emma, Mallgren*, Ibid. 366.

94. A licence *Held* to be violated by touching at an interdicted port. Condemnation of ship and cargo accordingly. *The Frau Magdalena, Hansen*, Ibid. 367.

95. A licence stipulating to touch at Leith, if destined to any port of this kingdom north of Hull, *Held* not to include the ports of Ireland. *The Hector, Eels*, Ibid. 379.

96. A licence to trade to a hostile port with liberty to touch at another such port for the purpose of clearance *only*, *Held* to be vitiated by shipment of cargo at such port of clearance, a fraudulent intention being proved. Ship and cargo condemned. *The Henrietta, Jurgensen*, 1 Dodson, 173.

97. A ship under Danish colours having a British licence permitting her to sail with a cargo from Liverpool to any port in Denmark, with liberty to touch at a port in Norway for clearances, and which by the compulsion of the Danish Government took on board at such Norwegian port a cargo for the use of the Danish Government in violation of the licence, condemned. *The Seyerstadt, Erbe*, Ibid. 241.

98. A licence *Held* not to be vitiated by touching at an interdicted port where the licence expressly permitted it. Restitution. Captors' expenses refused. *The Hoppet, Halberg, Edwards*, 369.

*See post*, Nos. 99. 110.

#### 15. *As to the port of destination.*

99. A licence to proceed to a port of the enemy, for the purpose of trading in certain enumerated articles, and a licence to touch at a hostile port, for the mere purpose of obtaining a clearance, are subject to very different considerations. *The Henrietta, Jurgensen*, 1 Dodson, 173.

100. A licence held to be vitiated by changing the destination expressed, the ship having deviated into the river Yadhé, and there being a failure of proof of distress set up as an excuse for such deviation. *The Europa, Schmidt, Edwards*, 342.

101. A licence to trade to one port of the United Kingdom will not protect a voyage to another port, though no *mala fides* be imputed or imputable in such departure from the conditions of the licence. An enemy's ship and cargo trading under a licence to Dublin, and admitting a destination to Leith, condemned. *The Manly, Hansen*, 1 Dodson, 260.

102. A licence "to come to any port of the United Kingdom" will not protect a Danish enemy ship destined to Heligoland, reduced by conquest into British possession, and the trade to which was under an Order in Council restricted to British ships. Ship and cargo condemned. *The Edel Catharina, Clansen*, Ibid. 55.

103. A licence to Gibraltar will not legalise a voyage to Palermo, Messina, and Malta, touching at Gibraltar, and finding there neither licence nor convoy. *Wainhouse v. Cowie*, 4 Taunt. 178.

104. A ship was permitted by a licence to proceed from D. to L., and thence to B., there to load, to the port of destination, from which she departed. The vessel proceeded on her voyage from D. to L., and from L. to B. *Held* that she was not pro-

tected by the licence on a further voyage from B. to L. *Everth v. Tunno*, 1 B. & A. 142., 1 Stark. 508.

#### 16. *How affected by contingent ulterior destination.*

105. A licence to import a cargo into this country *held* sufficient to protect a ship while on her voyage therewith to this country, though avowing an intention of an ulterior destination (if permitted) to a port of the enemy, after paying tonnage duties in this country. Restitution accordingly, with captors' expenses. *The Henrietta, Torbiornsen, Edwards*, 363.

#### 17. *As to the return voyage.*

106. A licence to proceed from this country with a cargo to an enemy port will be sufficient to protect the vessel returning with the same cargo, where she is prevented from delivering the cargo by the elements or the act of the enemy; but proof must be adduced that the return cargo is composed of the identical goods carried out, and that no others were taken on board in the enemy's port. Restitution in such a case. *The Jonge Frederick, Cloassen, Edwards*, 357.

*See post*, Nos. 124, 125.

#### 18. *Other cases.*

107. If an alien enemy commorant here under the King's licence to reside here purchase goods for exportation, the exportation thereof by him, after his licence to reside has ceased, is not protected by a licence to trade, also obtained after his licence to reside has ceased, and authorizing the exportation of the identical goods by B. & K., or other British merchants. *Waring v. Scott*, 4 Taunt. 605.

108. The stat. 43 Geo. 3. c. 153. s. 15. having enabled the King, by Order in Council, to license the importation of certain goods, being British or neutral property, from the enemy's country, in neutral ships, a contract made by A. and B., British subjects (the plaintiffs), for the purchase of brandy from a house of trade in France (an enemy), to be shipped from thence in a neutral ship, on account of A. and B., which contract was made in contemplation of obtaining a licence for that purpose, and a licence was accordingly obtained soon after the making of such contract, and before it was begun to be executed, is a legal

contract, and may lawfully be guaranteed in the first instance by C. and D., other British subjects (the defendants); and after such licence obtained the guaranteees are liable in damages for non-shipment of goods by the house in France on board a neutral ship sent there for that purpose, though it be objected to the licence legalising such trade, that it was not made out to A. and B. by name, but only to C. and D. and other British merchants; and that neither C. and D., nor even A. and B., had any property in the goods, whereas the licence required the goods to be imported to be the property of the said persons, or some of them; and until shipment the property continued in the house in France, for neither the Act of Parliament nor the King's licence required the owners of the property to be individually named; and even if the licence were to be so construed, as it only required the goods imported to be the property of "the said persons, or some of them, as may be specified in their bills of lading;" and as no bills of lading were made out which might have been made in the names of C. and D., and if so, would have conveyed to them a legal or special property in the goods, the defendants, C. and D., were still liable to answer, in damages, upon their guarantee, as for the non-performance of a legal contract. *Timson v. Merac*, 9 East, 35.

109. Though it be doubtful whether the statute 48 Geo. 3. c. 37., empowering his Majesty, by Order in Council, to permit during the war, &c., the importation of goods specified therein, from any place from which the British flag is excluded, in any foreign vessel, authorizes an Order in Council, licensing a British merchant, in general terms, to import a cargo "of such goods as are permitted by law to be imported (except German linens, stock-fish, and oil)," yet an importation into Great Britain from a port of Russia, under such a licence, of such lawful goods, in a neutral Hamburg ship, held to be authorized by the stat. 49 Geo. 3. c. 60., which makes it lawful, under any Order of Council already issued or to be issued, to import from any part of Europe or Africa, in any British or other ship of an alien friend, in any manner navigated, any goods which may be lawfully imported, the growth or produce of any country, on payment of duties, &c. *Schroeder v. Vaux*, 15 East, 52., 3 Camp. 84. n.

110. A voyage from Calcutta to Canton in ballast, and from thence to the Cape of Good Hope, under a licence from the

Governor-General of India, "to proceed in ballast from Calcutta to Canton, there to take in a cargo, and deliver it on shore at Calcutta, or on shore at any intermediate port or ports in the course of the voyage, and not elsewhere," held to be illegal, and not to be justified under the terms of such licence. *Balston v. Bird*, 1 Knapp. 121.

111. *Semble* that the East India Company cannot grant a licence to trade from Canton to the Cape of Good Hope. *Ibid.*

### III. OF THE CONSTRUCTION AND EFFECT OF — AS TO CARGO.

1. *In cases of British property on board enemy vessels disguised as neutrals, and having a British licence.*

112. A licence to import in a neutral vessel would not authorize an importation in an enemy's vessel, but it would be sufficient for the protection of the British importer of cargo if the ship were visibly and to all appearance neutral. *The Hoffnung, Berens*, 2 C. Rob. 162.

113. The interests of British merchants, owners of cargo, laden on board an enemy's vessel, pretending to be a neutral, and having a British licence as such, not parties to such fraud, shall not be affected by it. Cause directed to stand over, for the purpose of giving an opportunity to the parties to show the existence of British interests and the absence of *mala fides*. *The Dankbarkeit, Forbeck*, 1 Dodson, 191.

2. *Where cargo is taken, the licence directing to proceed in ballast.*

114. A licence to proceed in ballast to a port of the enemy for the purpose of bringing a cargo from thence to England, held not to protect a vessel carrying a cargo to the port of the enemy, nor the plea that the cargo was taken on board by compulsion, to exempt the cargo. Ship and cargo condemned accordingly. *The Catherina Maria, Brothering*, Edwards, 337.

115. A licence to go to an enemy port in ballast, to bring a cargo to this country, held to be vitiated by proceeding thither with half cargo. Ship and cargo condemned accordingly. *The Wolfarth, Harting*, *Ibid.* 365.

*See post*, No. 138.

3. *Where part of the cargo is not enumerated in the licence.*

116. A quantity of barilla sent from London to a port of the enemy, but with

an asserted ulterior destination to a neutral port, and not enumerated with other articles of cargo, for which a licence had been obtained to export them to the enemy port, condemned, notwithstanding an asserted ulterior destination to a neutral port. *The Vriendschap, Govertz*, 4 C. Rob. 96.

117. Goods on board a ship not enumerated in her licence condemned, but the penal consequences thereof held not to affect the licence. *The Jonge Clara, Stevens*, Edwards, 373.

118. A licence sanctioning the importation of one description of property, and prohibiting another, will protect the privileged part of the cargo. *Pieschell v. Allnut*, 4 Taunt. 792.

119. If a vessel bring, under a licence, a cargo of enumerated goods from a hostile country hither, and also certain other goods not licensed, the insurance on the licensed goods is not thereby vitiated. *Ibid.*, and *Same v. Lavie*, *Ibid.* 792.

120. A licence to proceed to a hostile port for the purpose of trading in certain enumerated articles, held sufficient to cover certain other articles not enumerated, there being an absence of fraud. *The Henrietta, Jurgensen*, 1 Dodson, 174.

121. Under a licence for the importation of raw materials, lace is not properly included; but under the favourable circumstances arising from the situation of the parties, and from the orders having been given previously to the war, without an opportunity of countermanding, the property was restored: the Court, however, intimated that by this decree the necessity and duty of obtaining the protection of a licence where property was to be removed from the country of the enemy were not in any degree relaxed. *The Juffrou Catharina, Hansen*, 5 C. Rob. 141.

#### 4. Where there is an excess of cargo.

122. An excess in the quantity of goods permitted by a licence would not be considered as noxious to any extent, but a variation in the quality or substance of the goods is more material. 10 pipes of wine and 98 hides imported with a cargo of 250 tons under a licence to import barilla, wool, liquorice, orchilla, and dyeing wood, condemned, notwithstanding its proportion to the whole cargo being so small. *The Cosmopolite, Mathison*, 4 C. Rob. 12.

123. A licence for the exportation of 150 barrels of gunpowder held to protect

so much of a cargo of 300 barrels, and that the excess did not work a forfeiture of the whole cargo. *Keir v. Andrade*, 6 Taunt. 498., 2 Marsh. 196.

#### 5. As to return cargoes.

124. A licence to sail in ballast from any port north of the Scheldt to Archangel or any other port of the White Sea, there to take in a cargo of permitted goods and import them into the United Kingdom legalises a vessel which had sailed from Great Britain to St. Petersburg with colonial produce in bringing home a return cargo of the specified goods. *Staniforth v. Coombe*, and *Same v. Forsyth*, 5 Taunt. 726.

125. *Semble*, that a licence to bring home a return cargo implies a cargo purchased with the proceeds of the outward voyage. *Johnson v. Greaves*, 2 Taunt. 344. See *antè*, No. 106.

#### 6. As to substituted cargo.

126. A licence to import a cargo of cheeses from Amsterdam to London within a given time held sufficient to protect a cargo of cheeses shipped at Medemblick in consequence of the first cargo having become spoilt and after the expiration of the licence. *Aliter*, where the fresh cargo is of a different description or the shipment thereof takes place at the end instead of the commencement of the voyage undertaken under such licence. Ship and cargo restored. *The Wohlforth, Steenveld*, 1 Dodson, 306.

127. A homeward cargo shipped without laches after a licence had expired, having been through perils of the sea necessarily unladen in the course of the voyage, and destroyed by fire on shore, held, that the licence protected a cargo of the specified goods substituted for the cargo burnt. *Siffkin v. Glover*, 4 Taunt. 717.

See *antè*, No. 122.

#### 7. Where the cargo licensed is shipped in two vessels.

128. A licence to bring a cargo in one vessel held sufficient to protect the same cargo shipped on board two different vessels, one of them having only an attested copy on board and having taken in her portion of the cargo in another port. Restitution. *The Vrow Cornelia, Dykstra*, Edwards, 349.

129. A licence having been granted for an importation of a cargo of brandy from the port of Charente to Hull on a repre-

sentation that the same had been purchased for account of several British merchants, and was then lying at Charente; the parties' agents in France, finding it difficult, if not impossible, to export this cargo from Charente, caused part of the brandy to be carried overland to Bordeaux, where it was shipped on board a neutral ship, with a copy of the licence for her protection, and an indorsement thereon, declaring the intention of the shippers to act in that instance under the protection of the original, which had not then arrived, and stating the port of shipment as at Charente. The remainder of the cargo was afterwards shipped in another vessel from Charente bearing the original licence and arrived at Hull. The former shipment pronounced to be protected by the licence, and ship and cargo restored accordingly (affirming the decision of the High Court of Admiralty). *Seem*, that the licence could not protect two separate importations, and that, had the second vessel been captured on her voyage, she would have been liable to condemnation as not protected by the licence, the claimants having declared their election by the prior shipment. *Ibid.* 2 Acton, 66.

#### IV. WHAT CIRCUMSTANCES WILL VITIATE — ET CONTRA.

##### 1. *Fraud.*

130. If any fraud appear, the licence will be deemed invalid. *Shiffner v. Gordon*, 12 East, 295.

*See antè*, No. 96.

##### 2. *Purchase of* —

131. The purchasing of a British licence would not render it illegal. *The Acteon, Rogers*, 2 Dodson, 53.

##### 3. *Alterations in* — \*

132. The fraudulent alteration of a licence destroys its validity, notwithstanding the party claiming protection under it is innocent of the fraud. *The Louise Charlotte de Gulderoni, Hansen*, 1 Dodson, 308.

133. An explanation of an alteration in

the date of a licence, *Held* not to have sufficiently proved the intention of the grantor in favour of such alteration. *The Cosmopolite, Mathison*, 4 C. Rob. 13.

*See antè*, Nos. 49. 79.

##### 4. *Carriage of contraband.*

134. A British licence granted to an enemy ship, to carry a cargo of corn from Denmark to Norway, *Held* to be vitiated by carriage of concealed military stores. Condemnation of ship and cargo accordingly as enemy property. *The Nicoline, Nielson, Edwards*, 364.

##### 5. *Carriage of enemy correspondence.*

135. An enemy's vessel protected by a British licence carrying letters from the enemy's squadron to their own country, is not liable to condemnation by reason thereof, unless such letters were of a public nature and dangerous tendency. In the absence of proof thereof, the Court will presume the contrary. *The Acteon, Rogers*, 2 Dodson, 54.

##### 6. *Other circumstances.*†

136. There being a sufficient pre-existing licence, an additional insufficient one being obtained will not prejudice the former. *Siffkin v. Allnutt*, 1 M. & S. 39.

137. Two neutral Prussians, one of them resident in England, the other at Koningsberg, having a licence to export to all Baltic ports, some whereof were hostile, are not precluded from recovering on an insurance of goods exported and confiscated by an act of the Prussian government, then neutral. *Anthony v. Moline*, and *Same v. Waters*, 5 Taunt. 711.; and *see antè*, No. 37.

138. Where at the time of a blockade of the port of Amsterdam by the British, a neutral applied for and received from the British Government a licence to go "to the ports of the Vlie." *Held*, that this included Amsterdam, that being one of those ports; and although the neutral actually went through the Texel instead of the

\* 5. A fraudulent alteration of a licence avoids it, although the party claiming its protection be innocent of the fraud; but Courts of Justice will permit every thing to be done, though not expressed, which is necessary to effectuate the intention of the Crown in granting the licence. 1 *Park on Ins.* 515.

† 6. The use of an enemy's licence or protection

on a voyage to a neutral country in alliance with the enemy is illegal, and affects the property with condemnation. *The Julia and cargo*, 1 Gallison's (AMERICAN) Rep. 595.; *The Julia*, 8 Cranch's (AMERICAN) Rep. 181.; *The Hiram*, *Ibid.* 444., *The Hiram*, 1 Wheaton's (AMERICAN) Rep. 440.; *The Ariadne*, 2 *Ibid.* 143.

Vlie passage, and came out with a cargo, it was considered by the Court that licences ought to be favourably regarded against so harsh a right as that of blockade; and that the circumstance of alteration of route might be excused; and the licence containing no proviso prohibiting the bringing out a cargo, the so doing unaccompanied by fraud, *Held* to be almost an innocent misapprehension, not carrying penalty after it. Ship restored. *The Juno, Beard*, 2 C. Rob. 116.

#### V. OF THE ONUS OF PROOF OF — \*

##### 1. Generally.

139. A licence on board a ship, but not shown to apply to that ship, *Held* not to protect her from confiscation by reason of a voyage, illegal unless under the authority of a licence. Condemnation. *The Speculation, Eberhard, Edwards*, 344.

140. It is incumbent on parties claiming the benefit of a licence, if not the actual grantees, to connect themselves with the parties mentioned in the licences as their agents or otherwise. *Busk v. Bell*, 16 East, 3.; *Feize v. Neunham*, *Ibid.* 197.; *Robinson v. Morris*, 5 Taunt. 720.; *Butler v. Allnutt*, 1 Stark. 222.†

141. A general licence must be applied by evidence to the particular case in judgment; it makes part of the title of the party claiming to be licensed, to show how he obtained possession of a licence, which in the terms of it is general; it makes part of the plaintiff's case against the underwriter, to connect himself with the property insured. *Rawlinson v. Jansen*, 12 East, 223.

142. Where an assured British merchant in an action on a policy of insurance on goods bound to an enemy's port in Holland, seeks to protect the adventure under the King's licence to trade with the enemy, it is not sufficient to give in evidence at the trial and to prove his possession in fact before the voyage commenced, of a general licence dated three months before licensing six neutral vessels, under certain neutral flags, to pass unmolested to or from any port of Holland, from or to any port of this kingdom, with certain goods (including the goods insured), which licence was directed to R. S. and other British

merchants, with a condition annexed, that they should cause the licence to be delivered up to them or their agents when the ship should enter any port of this kingdom, without also giving probable evidence to account for his possession of the licence, and to show that the use of it was lawful, as by showing from whom and when he received it, and thereby connecting his own particular adventure with such general licence. *Barlow v. McIntosh*, *Ibid.* 311.

##### 2. Where lost.

143. Where a ship insured is captured in a voyage to an enemy's country, and the British licence legalising the voyage is lost, to show that she had such a licence, it is necessary to prove the loss of the paper purporting to be a licence which was on board ship, and to produce examined copies of the Order in Council for granting the licence, and the copy of the licence preserved in the Secretary of State's Office. *Eyre v. Palsgrave*, 2 Camp. 605. (Ellenborough.)

144. If a licence to trade be lost, the next best evidence is the register of it in the books of the Secretary of State. *Rhind v. Wilkinson*, 2 Taunt. 237.

145. Where a licence to trade with an enemy, granted abroad, had been returned after being used, to the Secretary of the Governor by whom it was issued, who had, as he believed, thrown it aside amongst the waste papers of his office, and did not know what was become of it, having afterwards searched for, but not recollecting the finding it, and thinking that he had not found it; this is reasonable and probable evidence of the loss of such licence, so as to let in parol evidence of its contents, the paper not being considered as of any further use at the time, and the witness's attention not having been then called particularly to the circumstances, and the witness may speak to the contents of the licence from memory, though he had made an entry of it in his memorandum-book for the private information of himself and the Governor, which book was not produced, he having given it to the Governor, who was gone abroad without returning it to him; for such book, if in Court, would not have been

\* 7. The party using a licence must show his authority. 1 *Park on Ins.* 514.

† 8. If this rule were not observed, a licence might be set up to sale, and it is not sufficient to

show that the ship's name was endorsed upon the licence at the hostile port of loading. 5 *Taunt.* 720.



evidence *per se*, but could only have been used by the witness to refresh his memory. *Kensington v. Inglis*, 8 East, 273.

## VI. MISCELLANEA.

146. A licence admitted by the party in possession thereof not to have been granted on the day of the date thereof, does not come under the common law rule respecting the incompetency of parties to aver against the authenticity of public instruments. *The Vrow Deborah*, 1 Dodson, 163.

147. Simple restitution only of a vessel seized on a voyage under the protection of a British licence pronounced for, the licence being doubtful in point of authority, and the capture being under the circumstances considered justifiable. *The William Howard*, 2 Dodson, 55.

148. The 39 Geo. 3. c. 98. authorizing the King in Council to license the importation of Spanish wool in neutral bottoms, and to release such vessels seized in that trade, *Held* not to preclude the Court of Admiralty from enquiring into the liability to condemnation of such ships on other grounds. *The Hoffnung, Berens*, 2 C. Rob. 162.

149. A ship seized in such a trade, and released by the Privy Council under the statute, but proceeded against in the Court of Admiralty, directed to give further proof of ownership in the absence of a bill of sale, and on the suggestion of the captors that she was enemy's and not neutral property. *Ibid.*

150. In a case of prize of a neutral ship, in which the Court had decreed restitution (being one of great misconduct in the cap-

tor, a privateer), and had referred it to the registrar and merchants to report upon a charge of embezzlement; on the report being afterwards brought up, stating the amount of embezzlement, the neutral claimant had become an enemy, application was therefore made to the Court by a British merchant, who had acted as agent for the neutral in claiming the property, to confirm the report, and direct the sum reported and the costs to be brought into the registry and paid out to him as an indemnification for his expenses. The Court directed the money to be brought into the registry to be at the disposal of his Majesty, intimating that the neutral claimant might apply for a licence to enable him to take it out as a reparation for the injury he had received. *La Purissima Concepcion*, 5 C. Rob. 357. n.

151. A licence was obtained to purchase a vessel out of the hands of an enemy merchant at Antwerp, with a view of recovering a bad debt. The agents of the purchaser gave a bond to the French government for the restitution of the ship at the conclusion of the war: *Held* that as the claimant did not know of this requisition for the bond at the time he obtained the licence from his own government, he could not be charged with the suppression of it, and the agent having made the terms, the principal must accede to them to indemnify the agent. The Court distinguished the case from that of persons going into the enemy's country, and becoming the asserted purchasers of vessels which the enemy is induced to make over *pro tempore* on account of the war. *The Clio, alias William Pitt, Schaken*, 6 C. Rob. 67.

## LIENS.\*

## I. GENERALLY.

## II. IN CASES OF PRIZE.

## III. ON FREIGHT — see FREIGHT.

## IV. OF MASTERS OF SHIPS — see MASTERS.

## V. OF MATERIAL-MEN — see MATERIAL-MEN.

## VI. OF MORTGAGEES — see MORTGAGEES.

## VII. ON PROCEEDS OF SALE OF SHIPS — see SHIPS.

## VIII. ON SHIPS' REGISTERS — see SHIPS' REGISTERS.

## IX. FOR MARINERS' WAGES — see WAGES.

\* 1. See on this head *Smith's Merc. Law*, book iv. cap. 2. p. 510.

2. The word "lien," in its proper sense in the law of England, imports that the party claiming it

is in the possession of that which he claims to detain. Where there is no possession actual or constructive, there can be no lien. *Abb. Sh.* 288.

## I. GENERALLY.

1. A creditor, having actual possession of a ship, may retain it till paid, as a ship-builder having a ship in his own dock. This lien exists in England. *The Vibilia, Richardson*, 1 W. Rob. 6.

2. A ship, while the possession of it is retained, is specifically chargeable in respect of the expense incurred in repairing it; but the possession parted with, the lien is lost. *Exp. Bland*, 2 Rose, 91.

3. Damage confers no lien by the vessel damaged against the damaging vessel. *The Volant, Merchant*, 1 W. Rob. 387.

4. The successful suitor, in a cause of damage, has a lien on the property condemned to the full extent of the owner's interest in the vessel. His claim is paramount to the extent of the value of the vessel at the period of the collision, and takes precedence of claims of mortgagees or bottomry bondholders prior to such period. His lien also extends to subsequent accretions in the value of the ship arising from repairs effected after the period when the damage was occasioned, and at the expense of the owner or of a stranger, who, being cognisant of the collision, effected such repairs on the security of bottomry; but *aliter* where the party effected the repairs on such security in ignorance of the collision. *The Aline, Stockebye*, *Ibid.* 120.

5. In a cause of collision payment of damage to the successful party out of the proceeds of the ship (sold under the decree of the Court) opposed by a party claiming a preferable lien thereon under an agreement for bottomry, the jurisdiction of the Court to entertain whose claim was denied, the Court, without in the first instance pronouncing for or against its jurisdiction over such a claim, proceeded as having undoubted jurisdiction in the cause of damage to adjudicate upon the quantum of proceeds to which the successful suitor was entitled in compensation for the damage; and such proceeds not being sufficient to satisfy both claims, to investigate and ultimately to decide in favour of the priority in part of the bottomry claimant's lien, directing the share of proceeds due in respect of his claim to remain in the registry until notice had been given to the owner, and intimating that on the owner

appearing and showing sufficient cause against the jurisdiction of the Court, it would direct such share so to remain until a good title thereto should be established; but that in that event the claimant in the cause of damage, the proportions of the proceeds allotted to him being insufficient to satisfy his claim, might make a good title to such share. *Ibid.* 121.

6. Recaptors from pirates have a lien on the property for salvage. *The Marianna, Dos Santos*, 3 Hagg. 208.\*

7. Where the master, in consequence of damage sustained on the voyage, of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England, *Held* that if the plaintiffs had acquired no legal title by the purchase they had no lien in respect of the monies laid out by them in the repairs. *Ridgway v. Roberts*, 4 Hare (V.C.) 106.

8. A mercantile house at Newry directed a house at Quebec to contract for the building of a ship for which they (the Newry house) would send out the rigging. The Quebec house entered into a contract with some shipbuilders accordingly. The Newry house then directed their correspondent at Liverpool to send out the rigging. He accordingly purchased the same and delivered it to the captain appointed by the Newry house to the new ship, who, it was held on the balance of evidence, delivered it to the Quebec house. *Held* that such delivery entitled the Quebec house to retain such rigging as against the Liverpool correspondent, on account of their lien on it for advances to the builders, and payment of Custom House expenses, although, previously to the delivery, they had obtained an assignment (*held*, under the circumstances, not to be a fraud on the Newry house,) of the ship to themselves from the builders, and had registered it in the name of one of the partners in their house; and that even if such delivery to the Quebec house were questionable, the delivery by the Liverpool correspondent to the captain, the agent of the Newry house, vested the property in the Newry house, and ousted the Liverpool correspondent's claim. Judgment of the Court

\* 3. The law of England has provided that salvage shall be a lien upon the goods saved. *Cross on Liens*, 291., and see the cases there cited.

below reversed accordingly. *Rogerson v. Raid*, 1 Knapp. 863.

9. Lien for general contribution to individual loss by property thrown overboard for the safety of the ship under the right of the master to require security, not extended to an injunction against delivering the cargo, receiving the freight, and parting with any share of the ship. *Hallet v. Bousfield*, 18 Ves. 187.

10. The Ship Registry Acts do not prevent a person from having a lien on papers, deposited with him, of a ship which he is commissioned to sell. *Mestaer v. Atkins*, 5 Taunt. 381., 1 Marsh. 76.

11. The owner of a vessel, upon receiving a loan of 200*l.*, deposited the ship in the hands of a broker, and executed a bill of sale to him, whereon was an indorsement that that assignment was made as a lien or security for the loan on the vessel, and that the broker should immediately sell and execute a lawful bill of sale of her to the purchaser, and, after retaining the amount of the loan, commission and charges, pay the surplus to the owner; the requisites of the Ships' Register Acts were not complied with: *Held* that this was no lien, but a mortgage void under those Acts; and that the broker, therefore, could not retain the vessel until payment of the loan. *Wilson v. Heather*, 5 Taunt. 642.

12. Part-owners of a ship are tenants in common, not joint-tenants; the other partners have no lien therefore on the share of one, a bankrupt, having been also managing owner, for outfit, freight, &c. *Exp. Younge*, 2 V. & B. 242.; *Exp. Harrison*, 2 Rose, 76.

## II. IN CASES OF PRIZE.\*

13. The rule that the captor takes *cum onere* is to be understood to apply where the *onus* is immediately and visibly incumbent upon the property, as in the case of freight due from the cargo of an enemy to the ship of a friend, which is an interest directly and visibly residing in the substance of the thing itself. But a mere right of action is not entitled to the same consideration in its transfer from the neu-

tral to a captor. The Prize Court excludes all such liens, for otherwise the captor would be subject to neutral liens being set up to defeat his claims upon hostile property, whilst he could not have the advantage of liens held by enemies upon neutral property. *The Tobago, De Witte*, 5 C. Rob. 218.; S. P. *The Marianna, Posadillo*, 6 C. Rob. 24.

14. A ship was sold by an American (neutral) to a Spanish (enemy) merchant in Buenos Ayres, and for the security of the purchase, which was covenanted to be paid in London (20,000 dollars at the first instalment), the Spaniard shipped a quantity of tallow consigned to the agents and correspondents of the American in London, and delivered the bills of lading to him to be forwarded to these agents, and they were accordingly forwarded, together with instructions from him to the same agents to procure insurance on the contents. When received, the proceeds of the tallow over and above 20,000 dollars, the insurance, &c., were to be paid over by the consignees in London to the supercargo on board the ship. *Held*, that the lien which the former owner might have retained on the property for the purchase-money was not such an interest as would support a claim of property in a Court of Prize. Captors are supposed to lay their hands on the gross tangible property, on which there may be many just claims outstanding between other parties which can have no operation as to them. *The Marianna, Posadillo*, *Ibid.* 24.

15. Application of British subjects for possession of an enemy's vessel seized under an embargo preceding a declaration of hostilities, the application being supported by affidavits only of the claimants that the vessel had been put into their possession as security for money advanced, and by a general power of attorney such as might be granted to parties having no claims upon the ship, refused, on the ground that the averment only of the claimants was insufficient under any circumstances, and that even on the affidavits no positive lien on the ship was shown, the advances stated to have been made not having been merely

\* 4. As against captors, Prize Courts recognise no lien upon enemy property in favour of the consignee for advances made by him to the shippers, whatever the doctrine of liens may give him. *The Frances, Irvin's Claim*, 8 Cranch's (AMERICAN) Rep. 418.

5. The only lien recognised is in very peculiar

cases, where it is imposed by a general law of the mercantile world, independent of any contract between the parties, as the case of freight upon enemy's goods seized in the vessel of a friend, which is always decreed to the owner of the vessel. *Ibid.*

for the purposes of repairs, &c., to the ship, but for the general mercantile transactions of the foreign owner. *The Belvidere, Marsh*, 1 Dodson, 353.

16. Application of British subjects, who, on being applied to by the master of a foreign vessel driven by stress of weather into an

English port for assistance, caused the cargo to be unlivered and warehoused and the vessel to be repaired, to be reimbursed their expenses therein out of such vessel afterwards seized under an embargo preceding a declaration of hostilities, pronounced for. *Ibid.* 355. n.

## LIMITATIONS.

### I. GENERALLY.

II. IN CAUSES OF BOTTOMRY — see BOTTOMRY.

III. IN PROCEEDINGS AGAINST PRIZE AGENTS — see PRIZE AGENTS.

IV. IN CAUSES OF SALVAGE — see SALVAGE (civil).

V. IN SLAVE SEIZURES — see SLAVE TRADE.

VI. IN QUESTIONS OF TITLE TO SHIPS — see TITLE.

VII. IN CAUSES OF MARINERS' WAGES — see WAGES.

### I. GENERALLY.

1. There are few questions in the Court of Admiralty to which any precise limitation is prescribed, but there is a principle of limitation in the administration of every system of jurisprudence, to be derived from the nature of things, which entitles the Court to avail itself of the maxim, *vigilantibus non dormientibus subveniunt leges*. *The Rebecca, Maddick*, 5 C. Rob. 102.

2. The Statute of Limitations does not extend to prize causes; but the equity of the principle of that statute in some degree reaches the proceedings of the Prize Court, and it is extremely fit that there should be some rule of limitation provided by the discretion of the Court, attending only to the nature and form of the process conducted there, by which captors or other persons should be protected against antiquated claims, and if there be any case of remote antiquity which ought not to be entertained, undoubtedly that would be one in which it clearly appeared that the party complaining had been fully apprised of the nature of his injury and of the mode of redress which he ought to have pursued. *The Mentor, Campbell*, 1 C. Rob. 180.

3. Courts of Equity will presume a release within the same limits of time within which juries will be directed to presume it, whether any Statute of Limitations be

applicable to the case or not. *Baldwin v. Peach*, 1 Yo. & Coll. 453.

4. The law of the country where a contract is made or is to be performed furnishes the rules for expounding the nature and extent of its obligation; but the law of the country where it is sought to enforce performance of a contract governs all questions as to the remedy and mode of proceeding, including lapse of time: where, therefore, a creditor of a firm in India died there, before his right of action was barred by lapse of time, and his personal representative in Scotland brought an action there against a partner of the firm, twenty-three years after the creditor's death, *Held*, that the English Statute of Limitations did not take effect, the action having been brought within six years after English probate or letters of administration were taken out to the deceased creditor. *Fergusson v. Fyffe*, 8 Clark & Fin. 121.

5. During the existence of the prize commission, there is no fixed and definite time by which a party can be said to be legally barred from calling on the captor to proceed to adjudication, although it may be proper to hold that there must exist a time which would work such an effect. *The Huldah, Mills*, 3 C. Rob. 235.

6. Although there has been an adjudication under an incompetent tribunal (a Vice-Admiralty Court imperfectly authorized), and a distribution under its decree,

the claimant may, even after a lapse of two years, compel the captor to proceed to adjudication before the proper tribunal. Protest of captor, in such a case, overruled. *Ibid.*

7. A monition against captors to proceed to adjudication after a lapse of six years refused, but the Court intimated that mere time would not have been an absolute bar, if the claimant had shown that he had used due diligence, and had been prevented by circumstances of inevitable and incurable necessity from prosecuting his demand in due time. *The Susanna, Smith*, 6 C. Rob. 48.

8. Captors are barred by lapse of time (seven years) from calling for the investigation of accounts between themselves and the Commissioners of the Navy, unless it can be shown that they had it not in their power to obtain a revision at an earlier period. *The Jonge Jan, Schnil*, 1 Dodson, 453.

9. It is always to be lamented when suits

for damage or actions of any other description are not brought until a considerable length of time after the occurrence of the accident or cause of action, as the memory of the witnesses cannot be so accurate as when deposing to a recent occurrence. If, therefore, the evidence be not so ample or precise as it ought to be, the complainant must take all the consequences arising from his own delay; but if the evidence be satisfactory, and the action be brought within a period allowed by law, the party will be entitled to recover, though there may have been great delay in bringing forward the case. *The John Brotherick*, 8 Jur. 276.

10. A prohibition will not lie to the Court of Admiralty for refusing a plea of the Statute of Limitations, if it be badly pleaded. *Ewer v. Jones*, 6 Mod. 26., 2 Ld. Raym. 937.

11. The description of time as "a month," held in legal matters to mean a lunar month, and in commercial a calendar month. *Hart v. Middleton*, 2 Carr. & K. 19.

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### LORDS OF MANORS.\*

1. Manors being part of the *corpus comitatus*, manorial rights are land jurisdictions, but the Crown may in many instances have granted the royalties of certain manors to subjects. In most manors on the sea-coast the lords claim the royalty of wrecks, and prove their right as against the Crown by the usage of taking them, and by the exercise of such right never having been questioned. *The King v. Two Casks of Tallow*, 3 Hagg. 297.

2. The possession necessary to constitute a title by prescription must be uninterrupted and peaceable both according to the law of England, the civil law, and the laws of France, Normandy, and Jersey. *Benest v. Pipon*, 1 Knapp. 60.

3. The lord of a manor cannot establish a claim to the exclusive right of vauking (cutting sea-weed) on rocks situate below low-water mark, except by a grant from the King, or by such long and undisturbed enjoyment of it as to give him a title by prescription. *Ibid.*

4. Where a ship cast on shore is not a wreck, the lord of the manor cannot entitle himself to salvage by interfering to secure it against the owner's consent. *Sutton v. Buck*, 2 Taunt. 302.

See CROWN, DROITS OF  
ADMIRALTY, WRECK.

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\* 1. If the sea overflows the land of any person, and after forty years flows back again, the owner shall have the land, and not the King. 2 *Roll.* 168. l. 47.

2. So by prescription the lord of the manor adjacent to the sea may claim lands derelict by

gradual decrease in respect of his loss, when the sea flows upon his land. 2 *Roll.* 168. l. 50., 169. l. 40. 50.

3. So the soil between the ebbing and flowing of the sea may be parcel of a manor. 2 *Roll.* 170. l. 5., 1 *And.* 89.

## MARINERS.

- I. GENERAL CONSIDERATIONS AS TO —  
 II. OF THE RIGHTS OF —  
 III. OF THE DUTIES OF —  
 IV. OF THE RESPONSIBILITIES OF —  
 V. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF MATES.

- VI. OF THE HIRING AND DISCHARGE OF —  
 VII. OF THE CORRECTION OF —  
 VIII. FOREIGN MARINERS.

See MARINERS' CONTRACTS, WAGES.

I. GENERAL CONSIDERATIONS AS TO — \*

1. Mariners, especially foreigners, are in an eminent degree *inopes consilii*, and the Court will give them every relief in its power consistently with the justice due to other parties. *The Madonna D'Idra, Paphagica*, 1 Dodson, 39.

2. The maritime law leans greatly to mariners. *The Elizabeth, Gull*, 2 Dodson, 407.

3. Mariners are the favourites of the law and placed particularly under its protection. *The Minerva, Bell*, 1 Hagg. 358.

4. It is the duty of the Court to protect mariners from oppression or injustice, and even from the effect of error leading to acts not strictly justifiable, if they should appear to have been occasioned by unjust provocation or violent conduct of those in command. *The Jupiter, Crosbie*, 2 Hagg. 221.

5. The Court is anxious to protect mariners against circumvention, and even misapprehension and error. *The Hoghton, Brady*, 3 Hagg. 112.

6. Officers are justly the objects of equal attention from the Court with common mariners, inasmuch as an injury done to their character is of wider extent and is attended with consequences of a more

serious nature. *The Robinett v. The Exeter*, 2 C. Rob. 261.

II. OF THE RIGHTS OF —

7. By 7 & 8 Vict. c. 112. s. 18. a supply of medicines, lime juice, sugar, vinegar, &c., shall, under penalties therein specified, be kept on board every British ship navigating to and from Great Britain, and in case the master or any seaman shall receive any hurt in the service of the ship, the expenses of medical advice, attendance, medicines, and subsistence for him until cured or brought to this country, shall, together with the costs of his conveyance thither, be defrayed by the owner without any deduction whatever from his wages on that account, and if paid by any officer on behalf of her Majesty the amount and costs shall be recoverable as a debt due to her Majesty.†

8. By 7 & 8 Vict. c. 112. s. 51., upon entry of seamen into the navy from any ships they shall be entitled to the immediate delivery up of their clothes, &c., and payment of any wages that may be due.

9. By the mercantile and naval service of Great Britain it is clearly the rule that seamen must be found with provisions as long as they remain on board and are willing

\* 1. A convenient treatise on practical seanship will be found in *Dana's Seaman's Manual*, parts 1. and 2., to which a useful dictionary of sea terms is appended at p. 83.

2. The 7 & 8 Vict. c. 112. (printed in the Appendix), consolidates and amends the laws relating to merchant seamen, and for keeping a register of seamen. This act repeals (except as to the establishment, regulation, &c., of the General Register Office of Merchant Seamen) the 5 & 6 W. 4. c. 19., which also repealed 2 & 3 Anne, c. 6., 2 Geo. 2. c. 36., 2 Geo. 3. c. 31., 31 Geo. 3. c. 39., 37 Geo. 3. c. 73., 45 Geo. 3. c. 81., 58 Geo. 3. c. 38., 59 Geo. 3. c. 58., 4 Geo. 4. c. 25., 3 & 4 W. 4. c. 88.

3. The 7 & 8 Vict. c. 112. amends and consolidates the laws for keeping a register of seamen, establishes a general register office, provides for

the issue of register tickets to seamen, and makes various regulations as to such register tickets.

4. The acts creating and establishing a corporation for the relief of maimed and disabled merchant seamen and their widows and children are the 20 Geo. 2. c. 38. and 4 & 5 W. 4. c. 52.

5. The 8 & 9 Vict. s. 116. makes sundry regulations for the protection of merchant seamen as to the persons authorized to hire and lodge them, &c.

† 6. Mariners wounded in the ship's service are to be healed at the ship's charge, but not those getting drunk and wounded on shore, and not in the ship's service. Sick mariners are to be provided for at the expense of the ship, and their wages during illness to be paid to them, or on their death to their representatives. *Laws of Oleron, cited in Godolphin's Adm. Jur.*, ext. 6, 7.

to do their duty. *The Castilia, Stewart*, 1 Hagg. 60.

10. A mariner rightly quitting his ship has a claim on the owners to be restored to his home and to provisions during such time. *The Eliza, Ireland*, Ibid. 186.\*

### III. OF THE DUTIES OF —

11. Mariners are not discharged from their duty to the owners of a ship in consequence of a mutiny. They are bound if possible to recover the ship by using their best endeavours whenever there is a reasonable prospect of success, but not to sacrifice their lives wantonly. *The Governor Raffles, King*, 2 Dodson, 18.

12. The obligation which the mariner signing the mariner's contract incurs is to navigate the ship in favourable weather and in adverse weather inducing shipwreck, and to exert himself to save as much of the ship and cargo as he can. *The Neptune, Clark*, 1 Hagg. 236.

13. The authority of the master does not merge in the misfortune of wreck, nor are the seamen at liberty, without staying a reasonable time for the recovery of parts of the ship and cargo (if there be any prospect in his judgment of such recovery) immediately to disperse themselves without some discharge from him. *Ibid.* 238.†

### IV. OF THE RESPONSIBILITIES OF —

14. A mariner who signs a contract for a particular voyage cannot decline to go without being exposed to heavy penalties,

but the master may vary the voyage, and the mariner cannot compel him to proceed upon it. He can only require to be paid for the time he served the ship in port if he do not choose to accompany her on her new destination. *The Elizabeth, Gull*, 2 Dodson, 408.

### See WAGES.

### V. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF MATES.

15. A chief mate suing for wages in the Court of Admiralty is bound to show that he has discharged the duties of that situation with fidelity to his employers. Amongst the most important of these duties are a due vigilance, care, and attention to preserve the cargo from robbery, but he is not responsible for any embezzlement that may occur not arising from any neglect of duty on his part. *The Duchess of Kent, Newby*, 1 W. Rob. 285.‡

### VI. OF THE HIRING AND DISCHARGE OF —

16. By 7 & 8 Vict. c. 112. s. 54. no seaman is to be shipped at a foreign port without the sanction of the Consul.

17. By 7 & 8 Vict. c. 112. s. 46. no seaman is to be discharged abroad nor to be abandoned or left behind without the sanction of the Consul of the place. By s. 48. if any of the crew are so left behind, the proof of sanction or authority is to be upon the master.

18. By 7 & 8 Vict. c. 118. s. 52. powers

\* 7. Though the master have sufficient cause for discharging a seaman, if he repent and offer amends and to return to his duty, the master is bound to receive him. *Hutchinson v. Coombs*, 7 (AMERICAN) Jur. 37.

† 8. It is the duty of mariners to use their utmost endeavours to save the ship, and if they preserve part thereof, the master is bound to allow them a reasonable consideration to enable them to reach their native country, but if they do not use such endeavours, they are not entitled to such provision, but wholly lose their wages on the loss of the ship. *Laws of Oleron, cited in Godolphin's Adm. Jur.*, ext. 3.

9. It is the duty of the master and mariners to exert themselves to the utmost in the hour of danger, and they must not desert the ship as long as they can remain on board. 1 *Park on Ins.* 302.

10. The mariners ought not to leave the ship whilst in a foreign port without leave of the master, but when the vessel is at anchor or at her moorings, they may do so, returning in due time, provided only a sufficient number of mariners remain.

*Laws of Oleron, cited in Godolphin's Adm. Jur.*, ext. 5.

‡ 11. In the absence of the master, the mate is entrusted with the care of the ship, and the government and management of the crew; and if a seaman be wrongfully dismissed by him, the owners are liable therefor, as the act of their agent. *Orne v. Townsend*, 4 Mason's (AMERICAN) Rep. 541.

12. Upon the death of the master the mate succeeds to his place *virtute officii*, by operation of law. He acts in the stead of the master in all cases where the latter is dead or absent. He does not cease to be mate in such cases; but he has thrown upon him cumulatively the duties of master. He is still a mate acting as master, and may sue for his wages as mate, in the Admiralty. *The George*, 1 Sumner's (AMERICAN) Rep. 151.

13. The mate, in sickness, is entitled to be cured at the expense of the ship, in the same manner as seamen, and therefore, if he be put on shore from sickness, for the convenience of the ship, his expenses for medicines, advice, attendance, and board, are to be borne by the shipowner. *Ibid.*

are given to her Majesty to sue for the amount advanced for the relief of seamen left abroad.

19. By s. 64. provision is made to enable the Commissioners of the Admiralty to provide for the relief of persons brought from Asia and Africa and left in this country in distress, and to recover the expenses thereof with costs against the master or owner of the ship in which they were so brought here.

20. The maritime law of any country is averse from the discharge of native seamen in foreign ports, but if it be entirely with their own consent they have no right to complain. *The Elizabeth, Gull*, 2 Dodson, 405.\*

See MARINERS' CONTRACTS.

#### VII. OF THE CORRECTION OF —

21. By 7 & 8 Vict. c. 112. s. 6. seamen refusing prior to or during the voyage to join or proceed in the ship or absenting themselves therefrom, may be committed

to gaol or sent on board by any justice of peace.

See DAMAGE (*personal*).

#### VIII. FOREIGN MARINERS.†

22. The Crown on being memorialised by certain Greek mariners of a foreign ship sold under the authority of the Court of Admiralty, directed the King's proctor to take proceedings to recover their wages, and provided them with the means of subsistence and to return to their own country. *The Madonna D'Idra, Paphagica*, 1 Dodson, 37.

23. Greek mariners of a Greek vessel sold by the authority of the Court, *Held* to be entitled, according to the law of their country, to subsistence until they could be returned to their country; such subsistence considered in the same light as wages, and pronounced for out of the proceeds of sale of the ship, and as taking precedence of bottomry bonds. *Ibid.* 40.

See *antè*, Nos. 1. 18, 19, 20.

### MARINERS' CONTRACTS.

#### I. GENERAL CONSIDERATIONS AS TO —

#### II. STATUTORY ENACTMENTS AS TO —

#### III. OF THE CONSTRUCTION OF —

1. *Generally.*
2. *As to specific covenants in —*
3. *As to specification of the voyage.*

#### 4. *As to deviations from the voyage.*

#### IV. OF THE EFFECT OF —

1. *Generally.*
2. *Where no rate of wages is specified.*

See MARINERS, WAGES.

#### I. GENERAL CONSIDERATIONS AS TO.‡

1. The mariners' contract is an ancient instrument necessary to describe the en-

agement of the contracting parties. The only stipulations necessary or proper in it are, on the part of the owners a description of the intended voyage, and on that of the

\* 14. The master may discharge a seaman from the vessel before the termination of the voyage, for a legal cause, but not for slight offences, nor for a single offence, unless of a very aggravated character. *Hutchinson v. Coombe*, 7 (AMERICAN) JUR. 37.

15. If a seaman be discharged abroad without justifiable cause, and without his own consent, the measure of damages is the full amount of wages till the return of the vessel, and the expenses of his own return. *Ibid.*

16. The intermediate earnings of the seaman may be deducted from the expenses of his return, but not from the wages due. *Ibid.*

‡ 17. The Court will not interfere in disputes

between the master and seamen of a foreign vessel, when they are bound by the articles to submit all disputes to a home tribunal. *Aertson v. The ship Aurora*, Bee's (AMERICAN) Rep. 161.

18. It is the right and duty of the mariners of a neutral ship after capture, to remain by the ship while there is any hope of recovering the property; and this is generally gone when there is a sentence of condemnation, and *a fortiori* when there is a sale thereof pending the proceedings, or under the sentence of condemnation. *Brown v. Lull*, 2 Sumner's (AMERICAN) Rep. 443.

‡ 1. The shipping articles constitute a several contract with each seaman to all intents and pur-



mariners an acceptance of the rate of wages. The other duties arising out of the contract are obligations created by the general law. *The Minerva, Bell*, 1 Hagg. 352.

2. An agreement for wages may be made by word of mouth or in writing. *The Prince George, Shaw*, 3 Hagg. 378. But see 7 & 8 Vict. c. 112. s. 2. *post*.

3. The rules and principles of law applicable to a total or partial forfeiture of wages may be deduced from the mariners' contract, the very object of which is to fix the duties between the parties. *The Luna, Fawson*, 3 Hagg. 359.

4. The object of the statute 5 & 6 W. 4. c. 19. is to protect the mariner and give him a security on the ship. The mariners' contract is intended for his protection, and the mariner incurs no forfeiture or penalty by not signing articles. It is only the master who does so. *The Prince George, Shaw*, *Ibid.* 378.

5. In a suit for wages the mariners' contract being brought in and not contradicted, it is unnecessary in a defensive plea of the owners to plead the execution thereof. *The Test, Brown* (2), *Ibid.* 312.

## II. STATUTORY ENACTMENTS AS TO —

6. By 7 & 8 Vict. c. 112. s. 2. no master of any British registered ship of whatever tonnage proceeding to parts beyond sea, or if employed in coasting or fishing voyages being of the burden of eighty tons or upwards, shall carry to sea any seamen as one of his crew (apprentices excepted) unless he shall have first entered into an agreement in writing with such seaman, specifying what wages the seaman is to be paid, the quantity of provisions he is to receive, the capacity in which he is to act or serve, and the nature of the voyage in which the ship is to be employed, so that the seaman may have some means of judging of the period for which he is likely to be engaged, that such agreement shall be properly dated and signed by the master and the seamen re-

spectively at the port or place where they shall be shipped, and the signature of each party shall be duly attested by one witness at the least, and the master shall cause the agreement to be read over and explained in the presence of such witness to every such seaman before he shall execute the same.

7. By s. 3. in the case of British ships of whatever tonnage bound beyond sea, such agreement shall be in the form set forth in Schedule A. to that act, and in the case of British ships employed in coasting or fishing voyages, and being of the burden of eighty tons or upwards, such agreement shall be in the form set forth in Schedule B. to such act, and such agreement shall not extend beyond the 30th of June and the 31st of December in each year, or on arrival in any port of the United Kingdom after the same respective dates.\*

8. By s. 4. if any master or owner of such vessels shall carry to sea any seaman without such agreement he shall forfeit 10*l.* in each case, and if he shall neglect to cause such agreement to be read over and explained to such seaman before the execution thereof by him, he shall forfeit 5*l.* in each case.

## III. OF THE CONSTRUCTION OF —

### 1. Generally.

9. In the construction of special agreements between owners and mariners the Court will take into consideration the disparity of intelligence between the contracting parties, and lean to afford protection to the mariner. *The Minerva, Bell*, 1 Hagg. 355.

10. In the construction of a mariner's contract the Court will give to the mariner the benefit of any doubt arising thereon. *The Hoghton, Brady*, 3 Hagg. 112.

### 2. As to specific covenants in —

11. The Court of Admiralty, being a Court of Equity, does not consider the words "binding and conclusive," (in 2 Geo. 2. c. 36. s. 2.) as applicable to ma-

poses, and have been so practically considered in Courts of Justice, as well as by merchants and mariners in all commercial nations in modern times. *Oliver et al. v. Alexander et al.*, 6 Peters' (AMERICAN) Rep. 143.

2. A change of masters does not justify the seamen in leaving the vessel after they have signed

articles to proceed on a definite voyage; for although the contract is made with the master, yet it is chiefly on the credit of the vessel that they depend for their wages. *Bray et al. v. The ship Atalanta, Bee's* (AMERICAN) Rep. 48.

\* 3. This act and the schedules A. and B. above referred to are printed in the Appendix.

riners' contracts of a special nature. *The Minerva, Bell*, 1 Hagg. 357.\*

12. An engagement in a mariner's contract, subjecting the seaman to loss of his wages for some years' service, performed in a variety of voyages on the other side of the globe, and in which the ship had earned numerous freights, in consequence of the loss of the ship on her arrival at the mouth of the Thames, pronounced void notwithstanding s. 2. of 2 Geo. 2. c. 36. *Ibid.*

13. Certain clauses in the ship's articles, providing that if contraband goods were found in the fore-castle the seamen living therein should forfeit their wages and 10*l.* penalty, held not to be conclusive to work a forfeiture of wages against any of the seamen not alleged and proved to have been personally implicated in the offence. An allegation propounding those clauses rejected as to seamen against whom no such proof was produced, but admitted as a bar to the claim of one of the seamen against whom such proof was adduced; but held that the penalty could not be enforced in the Court of Admiralty. *The Prince Frederick, Hart*, 2 Hagg. 394.

14. In a suit for wages the ship's articles contained a printed clause (usual in the Baltic trade) to the effect that should the vessel winter abroad, on account of the ice, the officers and men agreed to accept half wages during such detention. The ship went out in search of a freight, when the ice prevented her from getting a cargo, but not from sailing without one, and she wintered abroad: Held that there having been no negligence in endeavouring to procure a freight, the crew were entitled only to such half wages during such her detention. Claim of mariner for whole wages pronounced against, but without costs. *The Hoghton, Brady*, 3 Hagg. 100.

15. *Semble*, that a regulation in the seamen's articles of a merchant-ship, that "every seaman committed to custody for the preservation of good order shall forfeit his wages, together with everything belonging to him on board the ship," is, in point of law, a good and proper regulation. *Rice v. Haylett*, 3 Car. & P. 534. (Best.)

16. If there be a clause in the ship's arti-

cles that the seamen may leave at the end of three months, if the ship be in port or in perfect safety, of which the captain is to be the sole judge, and the ship, after three months, be in port in safety, the seamen may leave the ship without the permission of the captain. *Neave v. Pratt*, 2 N. R. 408.

### 3. As to specification of the voyage.

17. A mariner is entitled to know where the voyage is to be directed. *The Eliza, Ireland*, 1 Hagg. 186.; *The Minerva, Bell*, *Ibid.* 350.

18. The mariner, as well as the owner, has a right to know what is the precise voyage for which he undertakes to contract. However slight the alteration of the destination of the ship the mariner is entitled to know it before signing articles. *The Countess of Harcourt, Bunn*, *Ibid.* 248.

19. The mariner has a right to be informed, as far as competent accuracy can be applied to the subject, of the voyage for which he contracts, and the port of unlivery. In cases where the exigencies of commerce may not admit of such accuracy, precision must be given as far as practicable. *The George Home, Young*, *Ibid.* 375.

20. In interpreting the second section of 5 & 6 W. 4. c. 19. (repealed by 7 & 8 Vict. c. 112., see s. 2. *antè*.) the words "nature of the voyage," which is thereby directed to be specified in the mariner's contract, must have such a rational construction as to answer the leading purpose for which that section was framed, that is, to afford to the mariner as much certainty as to the import of his contract as is consistent with the reasonable convenience of trade, viz. a fair intimation of the nature of the service in which he is about to engage himself by such contract. *The Westmorland, Brigstock*, 1 W. Rob. 227.

21. In a suit for wages on a voyage described in the mariner's contract to be "from London to New South Wales and India, or elsewhere, and to return to a port in Europe," Held first, that the words "or elsewhere," composed no part of the ori-

\* 4. The Court of Admiralty has at all times asserted its right as a Court of Equity, to examine whether the clauses of ship's articles were reasonable, and as such binding on the mariners; but in the Courts of Law stricter principles of interpreta-

tion obtained, and the ignorance and improvidence of seamen, and their inability to appreciate the meaning and effect of a long multifarious instrument, led to the frequent scandal of cases of great cruelty and injustice. *Abb. Sh.* 610.

ginal agreement; secondly, that if they were not interpolated they were words not to be taken in that indefinite latitude in which they were expressed, but which must receive a reasonable construction and a limitation, extended or narrowed, according to the situation of the primary port of destination; and thirdly, that the contract, being once defeated, was not subsequently reinstated. *The Minerva, Bell*, 1 Hagg. 347. 361.

22. On a mariner's contract to navigate the ship "to Van Diemen's Land, *via* Cork and elsewhere, and back to London," the ship having sailed to Sydney, from thence to Batavia, and arrived in the Downs, *Held* that the refusal of a mariner to work during a voyage under such contract from the Downs to Rotterdam did not work a forfeiture of wages. *The Countess of Harcourt, Bunn*, *Ibid.* 248.

23. In a suit for wages an engagement in the mariner's contract for the voyage "from London to Batavia, the East India Seas, or elsewhere, and until the final arrival at any port or ports in Europe," *held* not to be such a sufficient indication of the ulterior port of destination as was due to the mariner, or to satisfy the stat. 2 Geo. 2. c. 36., and that on the arrival of the ship at Cowes for orders (as previously agreed between the owners and master) the seamen were not bound to proceed on a further voyage to Rotterdam. *The George Home, Young*, *Ibid.* 370.

24. In a suit for wages opposed on the ground of the desertion of the mariners on the vessel's arrival at Cowes, and of the port of discharge being in Holland, the mariner's contract specifying the port of delivery thus: "until her return to a port of discharge in Great Britain or continent of Europe (in either case the voyage to end in Great Britain), and term of time not to exceed three years." *Held* that on the arrival of the ship at Cowes the seamen were entitled to their discharge, and were not bound then to proceed to Holland, the description of the voyage, as contained in the mariner's contract, not being sufficiently explicit, nor meeting the requisites of the second section of the 5 & 6 W. 4. c. 19.; and that the limitation in the mariner's contract as to the time of the voyage did not affect the question. *The Westmorland, Brigstock*, 1 W. Rob. 226.

#### 4. *As to deviations from the voyage* —\*

25. A strict observance of the specified conditions of the mariner's contract as to the voyage is required from the owner. A spontaneous deviation of importance therefrom entitles mariners to their discharge by the law of England; but *aliter* as to deviations arising from unavoidable accident, necessity, or overruling authority. Where by some other codes such alterations are permitted, the mariners are *held* entitled to be compensated. Mariners should be compensated for all material deviations. *The Cambridge, Barber*, 2 Hagg. 247. 252.

26. In a suit for wages the voyage stated in the ship's articles to be from London to Madras and Calcutta, and back to the port of London, was deviated from under a new charterparty to the extent of going to the Prince of Wales' Island, and from thence to Calcutta, occasioning the delay of a month. The deviation was not notified, but was known at Madras to the crew, who were dissatisfied, but did not remonstrate. The mariner, on arriving at Calcutta, demanded his discharge, and refused to work in discharging the cargo, for which he was put in irons till the unloading was completed, when he quitted the vessel. *Held*, that such proposed deviation entitled the mariner to his discharge at Madras; that his remaining on board and doing duty on the altered voyage was not an implied consent, nor as the vessel was not, under such new charterparty, to return direct from Calcutta to England, a renewal of his engagement. Wages of the mariner, up to the time of his quitting the ship, pronounced for, with costs; though the Court inclined to the opinion that the mariner had acted illegally in refusing to work in the discharge of the cargo. *Ibid.* 243.

#### IV. OF THE EFFECT OF —

##### 1. *Generally.*

27. The mariner's contract or articles binds both parties, the owner and the seaman. *The Test, Brown* (1), 3 Hagg. 306.

28. The ship's articles are conclusive with respect to the specification of the wages and the voyage, but on other collateral agreements they are not in all cases conclusive, and the Court of Admiralty may, as a Court of Equity, consider how

\* 5. It is no violation of the mariner's contract if the vessel depart from the voyage described

through accident, necessity, or superior force. *Dana's Seaman's Manual*, 203.

far such clauses are reasonable and consistent with justice; bearing in mind the general ignorance and imprudence of seamen, and their inability to understand the meaning of a long and multifarious instrument as the ship's articles may be made by such additions. *The Prince Frederick, Hart*, 2 Hagg. 396.

29. A mariner who signs a contract for a particular voyage cannot decline to go without being exposed to heavy penalties; but the master may vary the voyage, and the mariner cannot compel him to proceed upon it; he can only require to be paid for the time he served the ship in port, if he do not choose to accompany her on

her new destination. *The Elizabeth, Gull*, 2 Dodson, 408.

2. *Where no rate of wages is specified.*

30. Where the contract is left imperfect as to the amount of wages, it is open to both parties to supply the omission by parol evidence, notwithstanding that the stat. 2 Geo. 2. c. 36. directs that such agreements shall be conclusive and binding. *The Harvey, Peach*, 2 Hagg. 82.

31. The articles, where no rate of wages is specified, are not conclusive. A *quantum meruit* has, in such a case, been sustained. *The Prince George, Shaw*, 3 Hagg. 378.

### MARSHALL.\*

1. The Marshall, or any other person undertaking a commission, incurs all the responsibility belonging to a prudent and honest execution of that commission, but this responsibility is limited to the exercise of common prudence and common integrity; notwithstanding which, if a loss occur, the commissioner is not responsible, but only for *dolus*, or *negligentia dolo proxima*. *The Rendsberg, Nyberg*, 6 C. Rob. 155.

2. Where property has been seized by a commissioned ship-of-war, either public or private, it is *de facto* under the joint locks of the King and the captor, although in the legal possession of the Marshall, according to the tenor of his writ. In the case of a *droit*, where the King, in his office of Admiralty, is the captor, it is under his locks alone. If an order comes for the release of that property, either on bail or for restitution, it is to be released to the party claiming at the expense of the party who releases. The King's ship, the private ship-of-war, and the Admiralty, are equally bound to execute such an order, which is performed in the two former cases by the agents of the captors, and in the case of the Admiralty by their officer, the Marshall. The expense of the release is no charge on the cargo, unless the captor's expenses are decreed as a charge on the cargo. *Ibid.* 174.

3. Except in cases of sale, where, for obvious reasons, a per-centage is allowed, for the double purpose of improving the sale and of repaying the responsibility incurred for the security of the money, a forensic payment, not only in the table of fees in the High Court of Admiralty, but in all tables and in all Courts, is charged, not *pro rata* of the subject matter, but *pro rata* of the time and attention given. *Ibid.* 170.

4. Marshall's charge of  $3\frac{1}{2}$  per cent. as a poundage to himself and the broker he employed on the sale of a ship after she came into the port of London allowed by registrar and merchants, but disallowed by the Court, and  $\frac{1}{2}$  per cent. being according to the ancient table of fees of the officers of the Court (which, however, in cases under 200*l.* in value, allows 1 per cent.) allowed in lieu thereof, the charge of a broker being allowed by the Court to the Marshall as a disbursement. *Ibid.* 161. 168.

5. Marshall's charge of  $\frac{1}{2}$  per cent. for delivery of goods to claimant on bail disallowed by registrar and merchants and afterwards by the Court, referring back their report thereon for further consideration, and suggesting an allowance to the Marshall in lieu of such charge of three guineas a-day *pro opere et labore*, but not on any principle of per-centage. *Ibid.* 172.

6. Marshall's charge of  $\frac{1}{2}$  per cent. on

\* 1. If the process is to be served within twenty miles from the city of London, it is to be given to the marshall for service, but if at any greater dis-

tance, it is committed to the party who applies for it. *Clerke's Prax. Adm.* 5.

the value of cargo for superintending the unloading and ordering appraisement thereof, disallowed by the Court, and three guineas a-day allowed in lieu thereof. *Ibid.* 169.

7. The duty of removal of a ship under a commission of removal is not a function belonging to the Marshall as such; and if committed to him, therefore, is so committed upon the same terms as to any other individual, viz. a *quantum meruit* with reference to the service performed. A charge of the Marshall of  $\frac{1}{4}$  per cent. commission on removal, exclusive of disbursements, disallowed by registrar and merchants, and afterwards by the Court; 150*l.* allowed by them on a *quantum meruit*, and confirmed by the Court. *Ibid.* 142. 160.

8. The Marshall is not liable for property legally in his possession, though not so in fact, being under the King's locks.

*The Buena, Ventura, cited in The Rendsberg, Nyberg, Ibid.* 157. 174.

9. Application to the Court against the Marshall (for whom no appearance was given) for reparation of a loss by pillage sustained while the ship was under his care, granted. Decree accordingly, with costs. *The Hoop, Morrel, 4 C. Rob.* 145. *Semble*, that if an appearance had been given by the Marshall, denying negligent custody, the Court would have thrown the proof thereof on the other party. *The Rendsberg, Nyberg, 6 C. Rob.* 157.

10. A rule nisi for the Marshall of the Admiralty, or his deputy, to pay over to the sheriff certain proceeds of sale of a ship sold under a decree of the High Court of Admiralty whilst in possession of the sheriff under a *fi. fa.* for satisfaction of a judgment debt, discharged. *The Flora, Findlay, 1 Hagg.* 300.

## MASTERS.

## I. OF THE APPOINTMENT OF —

## II. OF THE RIGHTS AND DUTIES OF —

1. *Generally.*
2. *As to cargo.*
3. *To order repairs and supplies.*
4. *As to hypothecation* — see *BOTTOMRY.*
5. *Of prize masters* — see *CAPTORS.*
6. *As to colours* — see *COLOURS.*
7. *As to convoy* — see *CONVOY.*
8. *As to freight* — see *FREIGHT.*
9. *As to correction of mariners* — see *DAMAGE (personal).*
10. *Over pilots* — see *PILOTS.*
11. *As to pirates* — see *PIRATES.*

12. *Where it is sought to dispossess them* — see *POSSESSION.*

13. *As to their private adventures* — see *PRIVATE ADVENTURES.*

14. *In cases of capture* — see *PRIZE.*

15. *As to sale of their ships* — see *TITLE.*

16. *As to their wages* — see *WAGES.*

17. *As to mariners* — see *MARINERS, MARINERS' CONTRACTS, WAGES.*

## III. OF THE LIEN OF —

## IV. OF THE RESPONSIBILITIES OF —

## V. OF THE EVIDENCE OF —

VI. OF THE OWNERS' RESPONSIBILITY FOR THE ACTS OF — see *OWNERS.*

## I. OF THE APPOINTMENT OF —

1. The Court will strongly incline to hold a person appointed master by the consignees of the cargo at a foreign port in consequence of the desertion of the former master, entitled to the privilege and competent to discharge the functions of a master appointed in the regular manner, and would strain hard to support the appointment if the transaction were conducted with perfect integrity; but, *quære*, what would be the effect of such an appointment not rati-

fied by a confirmation thereof by the owner? A communication having been made to the owner of the fact of such appointment, with a request that he would signify his disapprobation thereof if he did not wish the appointment to be continued, his not signifying any disapprobation and non-interference *held* to amount to a sufficient ratification of the appointment. *The Alexander, Tate, 1 Dodson,* 281.

See *BOTTOMRY, cap. VI. sect. 2.*

## II. OF THE RIGHTS AND DUTIES OF — \*

## 1. Generally.

2. It is the master's duty to employ his whole time and attention in the service of his employer, and to enter into no engagement for his own benefit. *Thompson v. Havileck* (1808), 1 Camp. 527.

3. Even though practice has sanctioned such a privilege. *Depalock v. Blackburn* (1811), 3 Camp. 68.

4. It is the duty of the master, in the case of an emergency, to do what is most for the interest of those concerned. *Plantamour v. Staples* (1790), 1 T.R. 611.n. (a.)

5. The master may vary the voyage after the execution of the mariner's contract, and the mariner cannot compel him to proceed upon it. *The Elizabeth, Gull*, 2 Dodson, 408.

6. By 7 & 8 Vict. c. 112. s. 55. masters of merchant ships are to produce, under penalty, agreements, log-book, muster-roll,

register-tickets, &c. to the officers of Queen's ships demanding the inspection thereof.

7. By sect. 56. Consuls, registrar of General Register Office, and officers of Customs are empowered to require from masters of British ships the production of agreements, log-books, muster-rolls, register-tickets, &c., under a penalty of 20*l.* in case of refusal.

## 2. As to cargo. †

8. The master is the agent of the owner of the vessel, and can bind him by his contract or his misconduct; but he is not the agent of the owners of the cargo unless expressly so constituted by them. *The Mercurius, Gerdes*, 1 C. Rob. 82.

9. There is a distinction between the effect of the master's conduct on the cargo in blockade, and in cases of insurance and revenue; the ground on which the latter

\* 1. On the incidental authority of masters of ships as resulting from their official capacity, see *Story's Commentaries on the Law of Agency*, 91. to 97.

2. The master acts in a double capacity; he is agent of the owner as to the ship and freight, and agent of the merchant as to the cargo. *Abb. Sh.* 370.

3. The master of a ship has the custody and trust of the ship and the goods in it. 3 *Lev.* 38.

4. The master is bound to his owners for the exercise of reasonable skill and care in the management of the vessel, and he and they are bound in like manner to every one who is affected by his acts within the scope of his employment. Mindful of this responsibility, he must, during the whole course of the voyage, at sea, at anchor, and in port, even when a licensed pilot is on board, be vigilant to avoid the peril of collision with another vessel. *Abb. Sh.* 228.

5. It is the duty of the master and mariners to exert themselves to the utmost in the hour of danger, and they must not desert the ship as long as they can remain on board. 1 *Park on Ins.* 302.

6. Masters may insure their wages, goods, and shares in the ship. *Ibid.* 12.

7. *Primaage* denotes a small payment to the master for his care and trouble, which he is to receive to his own use unless he has otherwise agreed with his owners. *Abb. Sh.* 404.

† 8. The master should always bear in mind that it is his duty to convey the cargo to the place of destination. This is the purpose for which he was entrusted with it, and which he is bound to accomplish by every reasonable and practicable method. Every act not strictly in furtherance of this duty is an act for which both he and his owners may be made responsible, and the law of

England does not recognise the authority of any tribunal or officer acting on his suggestion or at his instance, but will scrutinise their acts as much as his own. *Ibid.* 365.

9. If, by any disaster happening in the course of the voyage, the master is unable to carry the cargo to its place of destination, no direct rule for his conduct can be laid down, but as a general rule it may be said he is to do that which a wise and prudent man will think most conducive to the benefit of all concerned. Some regard may be allowed to the interest of the ship and its owners, but the interests of the cargo must not be sacrificed to it; transhipment for the place of destination is, if practicable, the first object; if that be impracticable, return ‡ or a safe deposit may be expedient. A sale should be his last resort, as he and his owners can only be protected therein by an extreme necessity. A sale, without such a necessity, under the decree of a British Vice-Admiralty Court, at the instance of the master, will not release them from such responsibility. *Ibid.* 367.

10. If, by reason of damage done to a ship or through want of necessary materials, she cannot be repaired at all, or not without great loss of time, the master is at liberty to procure another ship to transport the cargo to the place of destination; but if she can be repaired, he may detain the cargo until the repairs are made, and even hypothecate it for the expense of them. If the cargo be of a perishable nature, he may sell or tranship it as he shall deem best for the merchant's benefit. So if the ship be wrecked and the cargo saved. If she be in danger of sinking, and the master in consequence effect a transhipment to another ship, apparently of sufficient ability, which second ship perishes, whilst the first outlives the storm, the master will not be responsible. *Ibid.* 365.

‡ *Semble*, that the master bringing back goods under such circumstances might be entitled to some compensation from the owner of the goods. *Abb. Sh.* 367. n.

stand is wholly different: in insurance it is in virtue of an express contract which governs the whole case; and in revenue cases it proceeds from positive laws and the necessary strictness of all fiscal regulations. *Ibid.*

10. Although, in the ordinary state of things, the master is a stranger to the cargo beyond the purposes of safe custody and conveyance, yet in cases of instant, unforeseen, and unprovided necessity the character of agent and supercargo is forced upon him, by the general policy of the law, as well at sea as in intermediate ports. *The Gratitude, Mazzola*, 3 C. Rob. 257.

11. Such is the case of throwing overboard part of the cargo at sea, a right that may extend to *the whole* of the cargo in extreme necessity, when the lives of the crew cannot otherwise be saved, subject to the contribution of the ship in its average proportion. *Ibid.* 258. 260.

12. Such is the case also of ransom, in which, by the general maritime law, the master may bind by his contract the whole cargo as well as the ship. *Ibid.* 258.

13. So, too, if the master be driven into port with a perishable cargo, and the vessel be unable to proceed and carry her cargo without repairs, he is not bound to tranship, though he may do so. He must exercise his judgment whether to tranship or to sell a part of the cargo. *Ibid.* 259. 261, 262.

14. There is this distinction between a sale of the cargo and an hypothecation of it: only a part can be sold, because the express purpose of the sale is to enable the remainder to go forward; but the whole may be hypothecated. *Ibid.* 263.

15. If the repairs of the ship produce no benefit or prospect of benefit to the cargo, the master can neither sell nor hypothecate; but though the prospect of benefit may be more direct and more immediate to the ship, it may still be for the preservation and conveyance of the cargo; and when it is so, it is justly to be considered as done for the common benefit of both ship and cargo. *Ibid.* 261.

16. The captain has no right, under any circumstances of difficulty, to put an end to the voyage and sell the goods, though expediency may require it. *Van Omeron v. Dowick* (1809), 2 Camp. 42.

17. The master of a vessel is not justifi-

fied in selling any part of the cargo for the repairs of the ship in a foreign port, except in the case of urgent necessity. *Campbell v. Thompson*, 1 Stark. 490. (Ellenborough.)

18. The captain of a ship has no authority to sell the cargo except in cases of absolute necessity; and therefore, where, in the course of a voyage from India, the ship was wrecked off the Cape of Good Hope, and some indigo, which was part of the cargo, was saved, and was there sold by public auction by the authority of the captain acting *bond fide*, according to the best of his judgment, for the benefit of all parties concerned; but the jury found that there was no absolute necessity for the sale: *Held*, that the purchaser acquired no title; and that, the indigo having been sent to this country, the original owners were entitled to recover the value. — *v. E. I. Comp.*, 5 B. & A. 617.

19. A master is not bound to tranship the cargo because he might have done so in preference to taking up money on bottomry for the ship's repair; nor would a bottomry bond be invalid because he might have, but had not, done so. *The Lord Cochrane*, 8 Jur. 716.

See AVERAGE, BOTTOMRY, CARGO.

And see *ante*, Notes 2, 3., and *post*, Note 14. No. 31.

### 3. To order repairs and supplies.\*

20. The owners of a post-office packet are liable for stores ordered by the captain who is appointed by the Postmaster-General. *Stokes v. Carne*, 2 Camp. 339. (Ellenborough.)

21. The master of a ship ordered provisions for the ship, but sailed without paying for them, though having money from the owners for the purpose. The owners *held* liable to pay in proportion to their respective shares in the ship. *Speerman v. De-grave Galloay*, 2 Vern. 643.

22. Under the general authority possessed by the master of a ship, he may make contracts and do all things necessary for the due and proper prosecution of the voyage in which the ship is engaged. If, however, the owner or his personal agent be at the port, or so near it as to be reasonably expected to interfere personally, the master cannot, unless specially autho-

\* 11. For further cases as to the personal responsibility of owners for supplies or necessities

furnished to ships, see *Harrison's Digest*, vol. iii. p. 6155. *et seq.*, *Abb. Sh.* 133. *et seq.*

rized, or unless there be some usual custom of trade warranting it, pledge the owner's credit at all, but must leave it to him or his agent to do what is necessary. If, however, the vessel be in a foreign port where the owner has no agent, or if in an English port, but at a distance from the owner's residence, and provisions or other things require to be provided promptly, then the occasion authorizes the master to pledge the credit of his owner. *Arthur v. Barton*, 6 M. & W. 188., Abb. Sh. 140.; and see *Samsun v. Bragington*, 1 Ves. 443.; *Johns v. Simons*, 2 Ad. & Ell. N. S. 424., and 2 Park on Ins. 878.

23. A ship, after an absence of four years and a half engaged in the transport service, arrived at the port of Portsmouth, where she received orders from the Transport Board to proceed to Deptford, upon which the master borrowed money to pay seamen's wages (Portsmouth being a port of discharge) and to pay tradesmen's bills for articles supplied for the ship's use there. In an action against the owner for the money so advanced, the plaintiff was nonsuited; but, finally, the Court of Exchequer set aside the nonsuit, and ordered a verdict to be entered for the plaintiff for such sum as should, on a reference, be found due for the seamen's wages. *Robinson v. Lyall*, 7 Price, 592., Abb. Sh. 139.

24. Although in case of necessity the master has power to pledge the credit of his owners in a home as well as a foreign port, yet where the ship was lying at Newport, in Wales, and the owner resident at Plymouth, nothing appearing to prevent communication with him, *Held*, that the master could not pledge his owner's credit for necessary supplies and advances during the ship's lying there. *Stonehouse v. Gent*, 2 Ad. & Ell. N. S. 431. n.

25. A mere mortgagee of a ship, who does not take possession, is not liable for necessities supplied for the use of the ship previous to a re-transfer. *Twentyman v. Hart*, 1 Stark. 366. (Ellenborough.)\*

26. Prohibition lies to the Admiralty on a suit there by the master against part-owners for the seamen's wages which he had paid. *Anon. Fort.* 230.; *Woodward v. Bontham*, T. Raym. 3. †

See MATERIAL-MEN.

### III. OF THE LIEN OF — †

27. The master of a ship has a lien on the ship by reason of bills drawn and payments made for necessary repairs abroad, in the prosecution of the voyage, though there be no instrument of hypothecation. *Hussey v. Christie*, 13 Ves. 594., 9 East, 426.

28. But he has no lien thereon for money expended or debts incurred by him for repairs done to it on the voyage. *Ibid.*

29. Nor on the freight for his wages, or for his disbursements on account of the ship during the voyage, or for the premiums paid by him abroad for the purpose of procuring the cargo. *Smith v. Plummer*, 1 B. & A. 575.

30. Nor for wages, stores, or repairs done in England. *Wilkins v. Curmichael*, 1 Dougl. 101.

31. The captain of a ship, who has entered into engagements on account of the ship, thereby acquires a lien on the goods and on the freight to the extent of his engagements. *White v. Baring*, 4 Esp. 22. (Kenyon.)

32. By the law of England the master of a ship has no lien either on the vessel or freight for his wages or disbursements on her account. *Hussey v. Christie*, 9 East, 426., 13 Ves. 594.; *Smith v. Plummer*, 1 B. & C. 575.; *Atkinson v. Cotesworth*, 3 B. & C. 647., *Smith's Merc. Law*, 516. (But see, as to wages, the 7 & 8 *Vict. c.* 112.)§

33. The master's being turned out of possession upon the vessel's being captured, does not deprive him of his lien for the freight in case of her recapture. *Exp. Cheesman*, 2 Edm. 181.

\* 12. The mortgagee of a ship held liable for furnishings in a home port made on the authority of the master or owner, in respect the mortgagee had taken the possession and management of the vessel. *Russell v. Baird* (1839), 1 D. 931. (Scotch Rep.)

† 13. If the master expend money of his own for repairs or necessities to the ship, he has a right to call on the owners to repay him, like any other lender under such circumstances. *Abb. Sh.* 139.

‡ 14. No usage or custom vests in the master a power to detain his vessel for his wages, or for stores or repairs purchased or effected in England;

nor has he any actual lien for money expended or debts incurred by him for repairs while on the voyage. Possessing no lien on the ship, he has necessarily none on the freight or cargo in such cases, as the lien on the freight and cargo is consequential upon the lien on the ship. *Cross on Liens*, 297.

§ 15. *Seemle*, however, that by the general maritime law it is otherwise. *The Packet*, 8 Mason's (AMERICAN) Rep. 255.

16. The master may reimburse himself his wages out of the ship's freight and earnings. *Smith's Merc. Law*, 404.



IV. OF THE RESPONSIBILITIES OF —

34. By 9 & 10 *Vict. c. 100. s. 9.* masters of steam-vessels, neglecting to observe the regulations therein contained for the prevention of collisions, are liable to the penalties therein mentioned.

35. By *s. 13.* if any damage to any person or property shall be sustained in consequence of the non-observance, as respects any steam-vessel, of the rules in that Act contained relative to steam-vessels passing each other and exhibiting lights at night, the same shall in all courts of justice be deemed, in the absence of proof to the contrary, to have been occasioned by the wilful default of the master or other person having the charge of such steam-vessel; and such master or other person shall be subject in all proceedings, whether civil or

criminal, to the legal consequences of such wilful default.

36. Owners of vessels damaged have their choice of three modes of proceeding in the Court of Admiralty: *viz.* against the owners, or master personally, or against the ship itself. *The Volant, Merchant*, 1 W. Rob. 387.

*See antè, Notes 4. 8.*

V. OF THE EVIDENCE OF —

37. The master's evidence is not conclusive to prove a false destination, but it is of great weight, as in so deposing he bears testimony against his own and his employer's interests. *The Convenientia, Peterson*, 4 C. Rob. 204.

*See EVIDENCE.*

MATERIAL MEN.

I. WHO ARE — ET CONTRA.

II. OF THE LIEN OF —

1. *On the ship.*

(a) *Generally.*

(b) *Whilst in possession thereof.*

(c) *For repairs, &c., abroad.*

2. *On proceeds.*

III. OF THE CLAIMS OF — UNDER 3 & 4 VICT. C. 65. s. 6. IN RESPECT OF NECESSARIES SUPPLIED TO FOREIGN SHIPS.

1. *Of the statutory enactment thereon, and the construction thereof.*

(a) *Generally.*

(b) *As to the term necessities.*

(c) *Of the requisites of the Common Law to found claims there in respect of supplies, &c.*

IV. MISCELLANEA.

*See BOTTOMMEY, MASTERS.*

I. WHO ARE — ET CONTRA.

1. Those are commonly called material men whose trade it is to build, repair, or equip ships, or to furnish them with tackle and provision (necessary in any kind). *The Neptune, Cumberlege*, 3 Hagg. 142.

II. OF THE LIEN OF —\*

1. *On the ship.*

(a) *Generally.*

2. By the Civil Law and the Law of Nations material men have a lien not only

\* 1. In most of the countries governed by the Civil Law, repairs and necessities form a lien on the ship herself. In England the same doctrine for a long time prevailed in the Maritime Courts (1 Hagg. 320. 325., 1 Rol. Abr. 533., Cro. Car. 296.), until after a long contest it was finally overthrown by the Courts of Common Law and the House of Lords in the reign of Charles II. The practice, however, of the Court of Admiralty, of paying

material men out of proceeds of sale of a ship, continued until the decision of the Judicial Committee of the Privy Council (2 Knapp, 94.) affirmed such a practice to be illegal. *Abb. Sh.* 149. n.

2. The repairer of a ship in a home port *Held* to have no hypothec for the price of the repairs. *Wood & Co. v. Weirs, crs.* (1810), 1 Bell. 527. n. 3., 2 Bell. 98. n. 1. (SCOTCH REP.)

on proceeds but on the ship itself, but by the Common Law of England, which is binding on the Admiralty Court, material men have no lien upon an English ship in specie for costs of materials supplied in England. *The Neptune, Cumberlege*, 3 Hagg. 136. 139.

3. The general maritime law of Europe does not require a bond of hypothecation to give a lien on the ship for advances, but by the law of this country such an instrument is absolutely necessary for such purpose. *The Vrow Mina, Behrends*, 1 Dodson, 235.; *The Alexander, Tate*, Ibid. 280.; *The Zodiac, Scott*, 1 Hagg. 325.; *The Vibia, Richardson*, 1 W. Rob. 6. .

4. If repairs be done to a ship in England by order of the master there is no lien on the ship or the money it is sold for. *Buxton v. Snee*, 1 Vezey, 154.; *Hoare v. Clement*, 2 Show. 338., Alb. Sh. 143.; and see *Cradock's Case*, 2 Brownlow, 37., and *Leigh v. Burleigh*, Ow. 122.; but see *Franklin v. Hosier*, 4 B. & A. 341.

5. Whoever supplies a ship with necessities has a treble security, 1. the person of the master, 2. the specific ship, and 3. the personal security of the owners. *Rich v. Coe*, Cowp. 639., 1 T. R. 108. n.; S.P. *Ex parte Bland*, 2 Rose, 91.

6. Lord Kenyon, however, expressed a doubt whether this doctrine of Lord Mansfield was not too generally laid down. *Westerdeal v. Dale*, 7 T. R. 312.

7. Where a ship was transferred when at sea to a vendee resident in the port where she was registered, and money was paid by the vendee's agents under the sentence of a foreign Court for salvage and wages of the captain and crew, provisions, and sundry ship disbursements, *Held* that the salvage and mariners' wages were a lien on the ship, but not the sums paid for

the captain's wages nor the disbursements. *Richardson v. Campbell*, 5 B. & A. 203. n.\*  
See post, Nos. 11. 16.

(b) Whilst in possession thereof.†

8. A shipwright in possession of a ship has a lien thereon for repairs. *Franklin v. Hosier*, 4 B. & A. 341.

9. Material men in possession have a lien on the ship. *The Neptune, Cumberlege*, 3 Hagg. 139.

10. A shipwright who has taken a ship in his own possession may not be bound to part with the possession until he is paid for the repairs, any more than a tailor, smith, or artificer in regard to the object of his particular trade. *Exp. Bland*, 2 Rose, 91. Unless there be a special agreement to give credit for a certain period, or such an usage in the trade as is equivalent to a special agreement. *Raitt v. Mitchell*, 4 Camp. 146.

11. But a shipwright who has once parted with the possession of the ship, or has worked upon it without taking possession, and a tradesman who has provided ropes, sails, provisions, or other necessities for a ship, are not by the law of England preferred to other creditors, nor have any particular claim or lien upon the ship itself for the recovery of their demands. 1 *Hodgkiss*, 61.; 14 *Petersdorff's Abr.* 652.

12. A shipwright in the river Thames has no lien on a ship taken into his dock to be repaired without an express agreement for that purpose, because by the usage of the trade the credit is always given to the owner. *Raitt v. Mitchell*, 4 Camp. 146. (*Ellenborough*.)

13. It is otherwise where the shipwright deals for ready money. *Ibid.*

14. A sailmaker in possession of the sails of a ship for the purpose of repairing

\* 3. Payments by ship agents under the authority and order of a Foreign Court, comprising the wages of seamen, have been constantly recognised by the Courts here, on the ground of an acknowledged right of lien of seamen on the ship, while on the other hand the right of the ship captain in respect of lien has been expressly negatived. *Cross on Liens*, 314.

4. Where a ship on her arrival at Leghorn was attached to answer the claim of certain merchants for not having carried cargo agreeably to bills of lading, and the ship agents obliged to give security to answer the claim, and afterward by the sentence of the Court to pay the amount, and they also paid a sum for salvage in respect of services rendered to the vessel antecedently, and also other sums, pursuant to an order of the Court, for the wages of the master and crew, and for stores and sundry

ship's disbursements, *Held*, that the money paid under the attachment, the salvage, and mariners' wages, were a lien on the ship, but that the master's wages and the other disbursements, were not so. *Ibid.* 315.

† 5. Shipwrights have a lien on ships for repairs if actual possession be retained and the money for the repairs be due, but the debt must be due before the lien can be claimed, and a usage to give credit is equivalent to an express contract. In the case, however, of an agreement to put the ship in thorough repair, the shipwright is not prevented from claiming for the work partly done. Where the possession is parted with the lien is lost, though the mere giving up the ship's register would not be a delivery of possession. *Cross on Liens*, 312. et seq.

them, prior to the vessel being arrested under a decree of the Court of Admiralty, has a lien on the sails to the amount of repairs he has effected, and under the general law he would be justified in retaining possession of them till his debt is paid, as against the owners or others seeking to dispossess him. As against the authority of the Court, however, he has no right to detain them when the ship is in possession of its officer under a warrant from the Court. The Court can protect the just rights of the sailmaker. Motion for monition against the sailmaker to deliver up the sails to the officer granted, and monition decreed accordingly. *The Harmonie, Pradm*, 1 W. Rob. 178.

15. A shipbuilder who gave to a person for whom he was building a ship, shortly before the actual completion thereof, the builder's certificate required by the Register Act in order that his customer might obtain a certificate of registry in his own name (which was accordingly done), *Held* to have thereby declared that the general property of the ship was vested in his customer, but not to have thereby lost his right to retain the possession until the residue of the stipulated price was paid. *Woods v. Russell*, 5 B. & A. 942., Abb. Sh. 76.

(c) *For repairs, &c., abroad.*

16. If money be laid out in repairing a ship or her appurtenances in the river Thames this is no charge on the ship but on the owner, and in case of a suit in the Admiralty against the ship a prohibition will lie, but *aliter* if such repairs were done at sea. *Watkinson v. Bernardiston*, 2 Wms. Rep. 367.

17. There is a lien on a ship for repairs done abroad without any hypothecation. *Ex parte Halkett*, 3 Ves. & B. 135., 2 Rose, 194. 229.

18. But *quære*, as to advances for any other purposes. *Ibid.*

19. The distinction adopted by the law of England, which requires an express hypothecation for repairs of a ship in England, does not take place as to repairs abroad, and Ireland, Jersey, and Guernsey are foreign countries for this purpose. *Husie v. Christie*, 13 Ves. jun. 599., 9 East, 426., 3 Swanston, 139.

2. *On proceeds.*

20. Material men have no lien upon a ship or the proceeds thereof for repairs. Where, therefore, a person who had repaired a ship, had on the owners becoming bankrupt obtained possession of the proceeds thereof, *Held* that he must account to the assignees for such proceeds, and come in under the commission for the debt due to him for the repairs. *Ex parte Shank and Others*, 1 Atkins, 234., Abb. Sh. 147.; and see *Wilkins v. Carmichael*, 3 Dougl. 101.; *Smith and Another v. Plummer and Others*, 1 B. & A. 575.; *Wood and Others v. Hamilton*, decided in Dom. Proc. 15th of June, 1789.

21. Material men *Held* to have no lien (for supplies furnished in England) on the proceeds remaining in the registry of the Court of Admiralty, of a ship sold under a decree of that Court for the payment of seamen's wages. *The Neptune*, 3 Knapp, 94. Overruling the decision of the Court of Admiralty, 3 Hagg. 129.\*

22. The mortgagees of 48-64ths of a ship claimed the balance of proceeds thereof in the registry. This claim was opposed by a party who claimed the proceeds in respect of advances made by him for payment of the wages, board, and lodging of the master and crew, for which advances the certificate of registry had been deposited with him by the master as security, with a letter acknowledging the

\* 6. Before the above decision material men were allowed to sue against proceeds in the registry, though prohibitions have issued to the High Court of Admiralty in original suits instituted by them. Payment decreed to material men out of proceeds. *The John, Jackson*, 3 C. Rob. 288.; *The Adventure, Class*, cited therein.

7. This, however, was a case of a foreign ship, and the Court intimated that there was a difference between the jurisdiction as exercised upon a foreign and a domestic ship. *Ibid.*

8. An application made by a general creditor of the same ship for a warrant against the remaining proceeds, rejected on the ground that the account was of too general and unsettled a nature to entitle

the party to this remedy in the Court of Admiralty. *Ibid.*

9. The Court has also, prior to the above decision, entertained jurisdiction over proceeds in the registry to the extent of payment of claims of material men thereout, when not opposed by the owners, but *aliter* where opposed by them. *The Maitland, Studd*, 3 Hagg. 254.

10. Application of material men to be paid out of proceeds in register, the ship having been sold in a suit for wages, the owners opposing such application, and the accounts being complicated and disputed, rejected, but without costs, the case being a new one. *Ibid.* 253.

same; the Court considering itself bound by the case of *The Neptune* (2 *Knapp*, 94.) pronounced against the claim of the material man, and directed the proceeds to be paid to the mortgagees on the production of their deed, holding them entitled further to their costs out of the proceeds. *The New Eagle*, 10 Jur. 623., 4 Notes of Cases, 426.

*See ante*, Note 1., No. 2.

### III. OF THE CLAIMS OF—UNDER 3 & 4 VICT. C. 65. §. 6. IN RESPECT OF NECESSARIES SUPPLIED TO FOREIGN SHIPS.

#### 1. *Of the statutory enactment thereon, and the construction thereof.*

##### (a) *Generally.*

23. By 3 & 4 *Vict. c. 60. s. 6.* it is enacted, that the High Court of Admiralty shall have jurisdiction to decide all claims for necessities supplied to any foreign ship or sea-going vessel, and to enforce payment thereof, whether such ship or vessel may have been within the body of a county or on the high seas at the time when the cause of action accrued.

24. This stat. confers on the Court a jurisdiction as to necessities supplied to a foreign ship, to be employed in every lawful mode which the Court has the power to exercise for enforcing payment, *viz.* by arresting the person of the owner or the property. The Court is bound to exercise such jurisdiction equitably, and in so doing to protect the interests of all parties having a *bond fide* lien on the property. *The Alexander, Larsen*, 1 W. Rob. 294., 5 Jur. 1067., 1 Notes of Cases, 185.

25. The 6th sect. of the 3 & 4 *Vict. c. 65.* refers exclusively to foreign vessels. *The Ocean*, 9 Jur. 381., 4 Notes of Cases, 31.

26. Motion under the 3 & 4 *Vict. c. 65.* to arrest a vessel built and registered at New Brunswick, and the property of a mercantile firm residing in Nova Scotia, for necessities supplied to her, rejected, she being *Held* not to be a foreign sea-going vessel within the provisions of the 6th section of the act. *The Ocean Queen*, 1 W. Rob. 457., 5 Jur. 1201., 1 Notes of Cases, 271.

27. To found the jurisdiction of the Court of Admiralty under this section, the articles must have been furnished to a foreign ship within the body of a county or upon the neighbouring high seas, in cases of exigency and necessity arising. Therefore a claim under the statute for payment of goods

supplied by a British manufacturer to a foreign ship building in a foreign port, dismissed with costs. *The Ocean*, 9 Jur. 381., 4 Notes of Cases, 31.

28. The Court of Admiralty has jurisdiction to entertain a suit, brought subsequently to the passing of the 3 & 4 *Vict. c. 65.*, for necessities supplied to a foreign vessel prior to the passing of that statute. Protest against the jurisdiction of the Court in such a suit overruled, no costs given. If in the exercise of such a jurisdiction facts should be disclosed to the Court showing that other persons have equitable claims on the vessel, which would be prejudiced by the demand set up, it will administer the law in equity, and decide between them, whether or not such circumstances should operate to prevent the material men from recovering against the ship. *Quære*, whether a ship having *bond fide* passed into other hands would be liable to such a demand? *The Alexander, Larsen*, 1 W. Rob. 288. 295. 297., 5 Jur. 1067., 1 Notes of Cases, 185.

##### (b) *As to the term necessities.*

29. The 3 & 4 *Vict. c. 65.*, which revives the ancient jurisdiction of the Court with regard to necessities supplied to a foreign ship, was never intended to alter the law, but merely to give a new remedy, rendered necessary in the peculiar cases of foreign ships, and confined to that necessity. The condition necessarily imposed on the Court in the exercise of that jurisdiction is this, that the Court must not make the owners of a foreign ship liable for the supply of any articles for which, under similar circumstances, if resident here, they would not be responsible in a Court of Common Law. *The Alexander, Larsen*, 1 W. Rob. 360., 6 Jur. 241., 1 Notes of Cases, 380.; *Sophie, Gustavus*, 1 W. Rob. 369.

30. The technical meaning of the term "necessaries" in 3 & 4 *Vict. c. 65.* strictly applies to anchors, cables, rigging, and matters of that description; but the term may be enlarged so as to include money expended on necessities, but in such a case satisfactory proof must be adduced that the necessities were wanting, and that the money was *bond fide* advanced for the purpose of procuring them. *The Sophie, Gustavus*, *Ibid.* 368.

31. In a suit by material men for necessities (an anchor and chain cable) supplied to a foreign ship under 3 & 4 *Vict. c. 65.*, opposed by the foreign owner on the

ground, 1st, that the articles were supplied to the master on his own personal credit, and not on that of the owner; and, 2nd, that they were not necessities within the meaning of the statute: *Held*, that the owner had failed in proof of the first, but had proved the second ground of objection, the *onus* of proof of the negative of which lay with the material men. Claim of material men accordingly dismissed with costs. *The Alexander, Larsen*, 1 W. Rob. 346., 6 Jur. 241., 1 Notes of Cases, 380.

32. In a claim for necessities supplied to a foreign ship under 3 & 4 Vict. c. 65. s. 6. it is absolutely necessary where the owner is abroad, to prove not only that the articles supplied were necessities, but that they were actually wanting for the service of the ship at the time when they were supplied. *The Sophie, Gustavus*, 1 W. Rob. 369.

33. A motion for *primum decretum* for the sale of a foreign ship at the suit of material men under 3 & 4 Vict. c. 65. for necessities, part of which consisted of money supplied to the master, who was also part-owner, directed to stand over until a further affidavit should be brought in, in verification of the money having been applied in the purchase of necessities. *Ibid*.

34. In a claim for necessities supplied to a foreign vessel under 3 & 4 Vict. c. 65., the *onus* of proof rests with the material men. It is not sufficient to aver that they are necessities. They must be necessary at the time and under the then existing circumstances, in the sense the law requires. The rule for estimating what are "necessaries," within the meaning of this act, is to inquire what a prudent man would do if he were present. A less degree of evidence might suffice to prove the existence of a necessity in the case of the supply of an anchor and cable, than would be required in the case of a loan of money. *The Alexander, Larsen*, 1 W. Rob. 361., 6 Jur. 241., 1 Notes of Cases, 380.

*And see the next section.*

(c) *Of the requisites of the Common Law to found claims there, in respect of supplies, &c.\**

35. The principle upon which the owner of a ship is made responsible for necessities

furnished to him by order of the master is this, that in the employment of the ship the master is the agent of the owner, and his character and situation furnish a presumption that he has authority from the owner to take all measures that may be necessary for rendering the employment of the vessel efficient and beneficial to his employer. *The Alexander, Larsen*, 1 W. Rob. 356.

36. A shipowner is not only liable for necessary repairs done to a ship by the master's order, but for such as are fit and proper for the vessel on her voyage, and such as a prudent owner, if present himself, would order. *Webster v. Seekamp*, 4 B. & A. 352.

37. Owners are personally responsible for money advanced, though without their authority, to the master abroad in the course of a foreign voyage; but the lender, to entitle him to recover, must prove the actual existence of the necessity for such advances. *Carey v. White*, 1 Bro. Par. Cases, 284.; *Rocher v. Busher*, 1 Stark. 27.; *S. P. Evans v. Williams*, Abb. Sh. 128.; and see Abb. Sh. 136.

38. The plaintiff must show that it was necessary to borrow the money, and must prove the actual application of it. *Bogle v. Atty, Gow*, 50. (Dallas.)

39. It must be advanced to the master expressly for the use of the ship, otherwise, although expended for that purpose, the owner will not be responsible for it to the lender. *Thacher v. Moates*, 1 M. & Rob. 79., Abb. Sh. 139., Smith's Merc. Law, 106.

40. The money so supplied to a master must not be understood to be an indefinite supply of cash, which the master may dissipate, but only such as is warranted by the exigency of the case, as for the payment of duties or other necessary purposes. *Rocher v. Busher*, 1 Stark. 27.; *Boyce v. Attorney-General*, Abb. Sh. 139.

41. It is not sufficient to prove the advance of a much larger sum than was necessary for the use of the ship, and an application of part of that sum to such uses, and that the residue was placed to the private account of the captain. *Palmer v. Gooch*, 2 Stark. 428. (Abbott.)

42. A charterparty contained a clause "that sufficient money should be advanced

\* 11. The authority of the master to procure supplies and repairs to his ship when in a foreign port is not confined to such supplies and repairs as are absolutely or indispensably necessary; but includes all such as are reasonably fit and proper for

the ship and the voyage. *The ship Fortitude*, per Story J., Circuit Court of the United States at Boston, May term, 1838, Curtis's (AMERICAN) Adm. Dig. 92.

to the master for disbursements, not exceeding 200*l*." The party to whom it was addressed having advanced to the master, when abroad, a larger sum for the use of the ship, *Held*, that he was entitled to recover the full amount against the owners. *Vaughan v. Fitzhugh*, 3 Jur. 1002.

## IV. MISCELLANEA.

43. By 7 Geo. 1. c. 21. s. 2. all contracts

and agreements whatsoever made by any of his Majesty's subjects or any person in trust for them, for the supplying any ship in the service of foreigners, and bound or designed to trade in the East Indies or parts therein mentioned, with goods, provisions, stores, or necessaries, are declared void.

*See antè*, No. 14.

## MERCHANDISE.

1. All personal property, if saleable, is merchandise, although the person in possession of it may not be a merchant or mean

to dispose of it by sale. *Demerara and its Dependencies*, 1 Dodson, 265.

*See CARGO.*

## MORTGAGEES.

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —

## II. OF THE TITLE OF —

## III. OF THE RIGHTS OF —

## IV. OF THE LIABILITIES OF —

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —

1. By 3 & 4 *Vict. c. 65. s. 3.* whenever a vessel shall be under arrest in the High Court of Admiralty, or proceeds thereof brought into the registry, the Court of Admiralty shall have jurisdiction over claims of mortgagees, and to decide any suit instituted by such persons in respect of such claims.

2. This section was not intended to confer on the Court of Admiralty a jurisdiction (with respect to the claims of mortgagees) different from what it before exercised, but to be remedial in enabling the Court to exercise its ordinary jurisdiction for the benefit of the suitors, to the full extent which justice required. *The Fortitude, Douglas*, 2 W. Rob. 217., 8 Jur. 24., 2 Notes of Cases, 515.

3. *Semble*, that prior to this act a mortgagee, though he could not have initiated a suit in the Court of Admiralty, might yet have intervened for the protection of his interest. *The Dowthorpe, Lofty*, 2 W. Rob. 83.

4. The enabling power conferred upon the Court of Admiralty by the 3 & 4 *Vict. c. 65. s. 3.* does not extend to all questions arising out of a deed of mortgage, but is confined to the ship itself being mortgaged. A vessel having been arrested in a suit for wages the mortgagees of 48-64ths of the ship obtained a warrant, purporting to arrest the ship and freight. An appearance having been given for the master, the owner of the remaining shares of the ship under protest to the jurisdiction of the Court, the protest sustained. *The Fortitude, Douglas*, 2 W. Rob. 217., 8 Jur. 23., 2 Notes of Cases, 515.

5. The interest of a mortgagee is not a question for the decision of the Admiralty Court. *The Exmouth, Owen*, 2 Hagg. 88.n.

6. The Court of Admiralty has no jurisdiction to decide on questions of property between a mortgagee and owner. *The Neptune, Cumberlege*, 3 Hagg. 132.

*See post*, Nos. 19. to 25.

## II. OF THE TITLE OF — \*

7. A mortgage of a ship at sea is good

\* 1. If the transfer of a ship be by way of mortgage, as the whole property does not pass to the mortgagee, the mortgagor may transfer the portion

which remains in him to a second purchaser or mortgagee, in the manner prescribed by the Registry Act, and it seems to have been considered

in bankruptcy, notwithstanding the statute of *Jac. 1.*, if the party procure the bill of sale; but *contra*, if he be incautious or negligent, as by suffering the ship to come back and go on another voyage. *Ex parte Matthews*, 2 Ves. 272. Such a mortgage (the forms of the Registry Act being observed) held valid, and an injunction granted to prevent an improper indorsement on the certificate of registry. *Thompson v. Smith*, 1 Mad. 395.

8. The owner of a vessel upon receiving a loan of 200*l.* deposited the ship in the hands of a broker, and executed a bill of sale to him whereon was an indorsement that that assignment was made as a lien or security for the loan on the vessel, and that the broker should immediately sell and execute a lawful bill of sale of her to the purchaser, and after retaining the amount of the loan, commission, and charges, pay the surplus to the owner; the requisites of the Ship Register Acts were not complied with. *Held*, that this was no lien, but a mortgage void under those acts, and that the broker therefore could not retain the vessel until payment of the loan. *Wilson v. Heather*, 5 Taunt. 642.

9. Where a ship was mortgaged for a nominal sum, to secure an unascertained balance, with power to sell by auction, and in case of not being sold, the mortgagee to have the control and benefit until his claims were satisfied; a sale by private contract before the balance ascertained and while an investigation before arbitrators as to the amount was pending, *Held* an unauthorized and wrongful sale (reversing the judgment below), and an account of the value of the ship at the time of such sale ordered to be taken, and the respondent liable to the appellant for such value. *Bronard v. Dumaresque*, 3 Moore, 457.

10. An assignment of a ship by way of mortgage, which is defective by not having

complied with the Registry Act, cannot be made good in Equity. *Ex parte Bulteel*, 2 Cox, 248.

11. By 5 Geo. 4. c. 113. s. 39. (abolishing the slave trade) all bonds, mortgages, or other securities, given in contravention of that act, are void.

12. By the 6 Geo. 4. c. 110. a mortgage of a ship, duly recorded in the Custom House books and indorsed on the ship's register (sec stat.), is valid against all creditors, even in cases of bankruptcy. It can only be defeated by a claim for wages or by a bottomry bond, executed by a master in a case of absolute necessity — strict necessity arising on a voyage. *The Dunvegan Castle*, *Howard* (2), 3 Hagg. 333.

13. By 8 & 9 Vict. c. 89. s. 45., upon transfers of ships or of any share thereof, made only as a security for the payment of debts, either by way of mortgage or of assignment to a trustee for sale, the entry and indorsement are to state and express the fact, and the person to whom such transfer is made, or any other person claiming under him as a mortgagee or trustee, is not by reason thereof to be deemed the owner, nor is the transferee to be deemed by reason thereof to have ceased to be an owner, except so far as may be necessary for the purpose of rendering the ship or share so transferred available by sale or otherwise for payment of the debt, for securing the payment of which such transfer shall have been made.

14. By 8 & 9 Vict. c. 89. s. 46., on transfer of ships by way of mortgage or assignment as security for the payment of debts and registration thereof under this act, the rights of the mortgagee shall not, after such registration, be affected by any acts of bankruptcy of the mortgagor, notwithstanding the mortgagor shall at such time be the owner and continue in possession, and the claims of such mortgagee shall take precedence of those of the assignees of the mortgagor.\*

that an instrument purporting to transfer such residue of interest, and noticing the right of the prior mortgagee, did not entitle the party claiming under it to a priority to such mortgagee, although his transfer may never have been endorsed on the certificate, and all proper formalities may have been complied with in the case of the second mortgage. *Ibid.* 85.

2. A conformity with the old Ship Registry Acts was in several cases held requisite to the validity of a bill of sale intended by way of mortgage or security, and it was held in one case that, although the person to whom the security was

given had the control or the possession of the ship, which was then in a port, he did not obtain a lien upon or right to detain the ship, against the assignees of the person by whom the security had been given, the requisites of the statute as relating to his bill of sale not having been complied with. *Ibid.* 85., and see *Wilson v. Heather*, 5 Taunt. 642.

\* 3. *Semble*, that in the construction of the stat. 3 & 4 W. 4. c. 55., there is no distinction between mortgages for the security of an antecedent debt and other mortgages, see *Wilkinson on Shipping*, 367., and the cases there cited.

15. A mortgagee is not an owner according to the 45th sec. of the stat. 6 Geo. 4. c. 110., which enacts that mortgagees shall not be deemed owners. *The Fruit Preserver, Brown*, 2 Hagg. 182.

16. *Quære*, does a mortgagee in possession of a ship with a power of sale, the time specified for the redemption having passed, become the owner under 6 Geo. 4. c. 110. *The Neptune, Cumberlege*, 3 Hagg. 133. 135.

17. Motion for warrant of arrest at the instance of the mortgagee or purchaser for the purpose of transferring possession of a ship, the interest in which was by deed vested in the purchaser absolutely in default of payment within a given time (then passed) of money advanced by him, rejected, the Court holding the case to be one of adverse title, and that the 6 Geo. 4. c. 110. did not increase the jurisdiction of the Court, or make ships more absolutely transferable by such conditional bills of sale for the purposes of security than they were before. *The Fruit Preserver, Brown*, 2 Hagg. 181.

18. The title of mortgagees is in questions of bottomry and similar cases equivalent to that of the owners. *The Mary Ann*, 10 Jur. 255.

See NAVIGATION LAWS,  
cap. 3. sec. 3. div. (a).

### III. OF THE RIGHTS OF —

19. *Quære*, Whether the ship having been sold, the proceeds being insufficient to pay the mortgages thereon and the owner being a bankrupt, a principal mortgagee has a sufficient interest to oppose a mariner's claim for wages? *The Prince George, Shaw*, 3 Hagg. 377. 380.

20. A mortgagee is not entitled to arrest a vessel for the purpose of enforcing bail for her safe return to this country. Motion on behalf of a mortgagee for such purpose rejected. *The Highlander, Rendles*, 2 W. Rob. 109.

21. A mortgagee in possession of a ship sold in the Court of Admiralty under a decree of that Court for the payment of seamen's wages, *Held* entitled, preferably to material men, to the proceeds of the sale of such ship after payment of the wages and costs, and payment thereof decreed to him accordingly. *The Neptune*, 3 Knapp, 94.

22. The mortgagees of 48-64ths of a ship claimed the balance of proceeds thereof in the registry. This claim was

opposed by a party who claimed the proceeds in respect of advances made by him for payment of the wages, board, and lodging of the master and crew, for which advances the certificate of registry had been deposited with him by the master as security, with a letter acknowledging the same; the Court considering itself bound by the case of *The Neptune* (2 Knapp, 94.) pronounced against the claim of the material man, and directed the proceeds to be paid to the mortgagees on the production of their deed, holding them entitled further to their costs out of the proceeds. *The New Eagle*, 10 Jur. 623., 4 Notes of Cases, 426.

23. The payment of the proceeds as decreed having been subsequently opposed by a party alleging himself to be the sole owner and imputing misconduct to the mortgagees, the Court, without hearing counsel, stated that it could not enter into the question of the conduct of the mortgagees, and directed the proceeds to be paid out to them as before decreed. *Ibid.* n.

24. Accruing freight passes to the mortgagee of a ship who takes possession before the conclusion of the voyage, notwithstanding the 6 Geo. 4. c. 110. s. 45., which enacted that the mortgagee should not be deemed owner except so far as was necessary for the purpose of rendering the ship, &c., available, &c., for the payment of the debt, for securing the payment of which the transfer shall have been made. *Kerswell v. Bishop*, 2 C. & J. 529., 2 Tyr. 602.; *S. P. Dean v. McGee*, 4 Bing. 45., 12 Moore, 185., 2 Car. & P. 387.

25. Application of the mortgagee of a vessel, to be allowed to bid as a purchaser on the sale of the vessel and part of the cargo under the decree of the Court, granted. *The Wilsons, Hunter*, 1 W. Rob. 173.

As to freight — see FREIGHT.

### IV. OF THE LIABILITIES OF —

26. Parties taking an assignment of a ship or freight as security for a debt take such security liable to subsequently accruing liens, viz. bottomry bonds, salvage, wages, &c. *The Dowthorpe, Lofty*, 2 W. Rob. 79.

27. A shipowner assigned 15-16ths of a ship to his creditors, in trust to sell and retain his debts, and afterwards became bankrupt. The ship was afterwards sold: *Held*, that the creditor must bear his pro-



portion of the seamen's wages and other expenses on account of the ship. *Douglas v. Russell*, 4 B. & Ad. 533., 4 Sim. 524., 1 Mylne & R. 488.

28. A mere mortgagee of a ship who does not take possession is not liable for necessities supplied for the use of the ship prior to a re-transfer. *Twentyman v. Hart*, 1 Stark. N. P. C. 366.\* (Ellenborough.)

29. A mortgagee, at least since the Re-

gister Act, 6 Geo. 4. c. 110., is not liable for repairs, not being an owner to any greater extent than that of the value mortgaged, and the mortgagor continuing owner. *Irvine v. Richardson*, 2 B. & Ad. 193., 1 M. & Rob. 153. (But see *Castle v. Duke*, 5 C. & P. 359.) Nor for wages and disbursements of the master. *Annett v. Carstairs*, 3 Camp. 354.; *Jackson v. Vernon*, 1 H. Black. 114.

## NATIONAL CHARACTER.

## I. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO TERRITORIES, 233.

1. *From occupation by the enemy*, 233.
2. *Wrested from the government of the enemy*, 234.
3. *Other cases*, 234.

## II. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO PARTIES, 234.

1. *Generally*, 234.
2. *From residence*, 235.
  - (a) *Generally*, 235.
  - (b) *What is sufficient to constitute domicile — et contra*, 236.
  - (c) *Of the changes of domicile*, 237.
  - (d) *Of agents, how affecting principals*, 238.
  - (e) *Being consuls*, 238.
3. *Where abandoning their former residence, and returning to their native country*, 238.
4. *Having partners in houses of trade with various domiciles*, 239.
5. *From occupation in the enemy's trade*, 240.
6. *From the transfer by the enemy of their trading privileges to them*, 240.

7. *Being mariners*, 240.

8. *Other cases*, 241.

## III. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO VESSELS, 242.

1. *Generally*, 242.
2. *Purchased by neutrals of enemies*, 242.
3. *Navigating under enemy flag and pass*, 243.
4. *Navigating in the enemy's trade*, 243.
5. *Of the change of — in transitu*, 244.
6. *Other cases*, 244.

See NAVIGATION LAWS.

## IV. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO OTHER PROPERTY, 245.

1. *Generally*, 245.
2. *As dependent on the question of ownership*, 245.
  - (a) *Generally*, 245.
  - (b) *Of the change of — in transitu*, 246.
3. *As affected by the national character of the ship*, 246.
4. *As dependent on the national character of the soil of which it is the produce*, 247.
5. *Under illegal contracts*, 247.
6. *Other cases*, 247.

## I. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO TERRITORIES.

1. *From occupation by the enemy.*

1. A temporary occupation of a neutral country by the enemy by force of arms

does not change the national character of the country until that occupation is confirmed by a formal cession or by long lapse of time; but *aliter*, as to an occupation in time of peace and with the consent of the neutral sovereign. *The Bolletta*, *Trumpey*, *Edwards*, 173.

\* 4. The mortgagee of a ship held liable for furnishings in a home port made on the authority of the master or owner, the mortgagee having taken

the possession and management of the vessel. *Russell v. Baird* (1839), 1 D. 931. (Scotch Rep.)

2. The occupation of a neutral territory by the enemy in time of peace, with the concurrence of the neutral sovereign, *Held* to amount to presumptive evidence that that occupation was the result of cession by treaty, sufficient to invest it with an enemy national character. *Ibid.* 171.

3. Although a state may be in the hostile possession of one of two belligerents, that will not necessarily constitute her subjects enemies to the other belligerent, if the sovereign power of the latter choose to permit a continuance of commerce with them. *Hagedorn v. Bell*, 1 M. & S. 450.

*See post*, Nos. 25. 28.

2. *Wrested from the government of the enemy.*

4. If a body of persons assemble together to protect themselves and support their own independence, and make laws, and have courts of justice, that is evidence of their being a state; and it makes no difference whether they formerly belonged to another country or not, if they do not continue to acknowledge it, and are in possession of a force sufficient to support themselves in opposition to it. *Yrisarri v. Clement*, 3 Bing. 432., 11 Moore, 308., 2 Car. & P. 223.

5. Those ports of St. Domingo which were under the dominion of Christophe and the negroes engaged in hostility with France, *held* to be neutral ports, and no licence to be necessary to legalise a trade with them. *Johnson v. Greaves*, 2 Taunt. 344.

6. The negro population of St. Domingo, a French (enemy) colony, wrested portions of the island from the French authorities, and maintained within those parts an independent government of their own, which, however, had not been recognised by any express treaty; but the British government had shown a favourable disposition towards it. *Held* that such parts of the colony must, notwithstanding such occupation, still be considered as belonging to the enemy. *The Manilla*, *Barrett*, *Edwards*, 1.; S. P. *The Pelican*, *Burke*, *Ibid.* appendix D.

3. *Other cases.*

7. The national character of a place agreed to be surrendered by treaty continues as it was under the ceding country until the actual formal delivery of possession. Restitution accordingly of property seized

prior to the cession of the country to which it belonged to the enemy, and claimed by subjects of the ceding country, being neutral. *The Fama*, *Butler*, 5 C. Rob. 106.

8. A conquered country forms immediately part of the dominions of the conquering state. *The Foltina*, *Julius*, 1 Dodson, 451.

9. A country reconquered from an enemy reverts to the same state that it was in before its conquest: *Held*, therefore, that the British inhabitants of a part of the French dominions conquered by the Dutch, and afterwards reconquered by the French, ought to have had, after its reconquest, the same protection that they were entitled to under the treaty of commerce of 1786, and compensation awarded accordingly, under a treaty for that purpose, in respect of losses after the conquest by sequestration of their property by the French government, in contravention of the treaty of 1786. *Gumbe's case*, 2 Knapp, 369.

10. When a colony which has been in possession of enemies is incidentally recognised by a British act of state as no longer under their dominion, a subject of this country may lawfully trade thereto. *Blackburne v. Thompson*, 3 Camp. 61.; S. C. 15 East, 81.; S. P. *Johnson v. Greaves*, 2 Taunt. 344.

11. The statute 47 Geo. 3. sess. 1. c. 23. legalises from September 17, 1805, the trading to any places which then were, or should thereafter be, under the dominion of his Majesty. Buenos Ayres was taken by his Majesty's troops in the preceding year, and retaken on the 12th of August, 1806. *Held*, that an adventure to Buenos Ayres, commencing in the first week of September, 1806, was illegal, and the policy on it void. *Toulmin v. Anderson*, 1 Taunt. 227.

II. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO PARTIES.

1. *Generally.*

12. It does not follow that the national character which entitles a person to restitution in one transaction entitles him to it in all. A man may have different national characters, according to the course of different transactions. *The Two Brothers*, *McClousky*, 1 C. Rob. 132.

13. The native character easily reverts, and it requires fewer circumstances to constitute domicile in the case of a native subject than to impress the national cha-

acter on one who is originally of another country. *La Virginie, Coigneau*, 5 C. Rob. 98.

## 2. From residence.

### (a) Generally.

14. Questions of residence or domicile are questions of considerable difficulty, depending on a great variety of circumstances hardly capable of being defined by any precise rules. *The Harmony, Bool*, 2 C. Rob. 322.

15. A party may have mercantile concerns in two countries; and if he act as a merchant of both, he must be liable to be considered as a subject of both with regard to the transactions originating respectively in those countries. That he has no fixed counting-house in the enemy's country will not be decisive; if he be there himself, and act as a merchant of that place, making shipments, it is sufficient. *The Jonge Klassina, Bol*, 5 C. Rob. 297.

16. A merchant expatriating himself as a merchant to carry on the trade of another country, is to be deemed a merchant of that country, though less favoured there than one of the native subjects. The authorities thereon and upon the national character, and privileges of subjects resident abroad, as determined by the English laws, referred to and enlarged upon. *The Matchless, Vint*, 1 Hagg. 103.

17. In Europe and in the western parts of the world, residents take their present national character from the general character of the country in which they are resident. But in the eastern parts of the world, wherever a mere factory is founded, European persons trading under the shelter and protection of those establishments are considered, by a rule of the Law of Nations, applying peculiarly to those countries, to take their national character from that association under which they live and carry on their commerce. *The Indian Chief, Skynner*, 3 C. Rob. 12.

18. A British subject will be deemed an alien enemy if he reside and carry on trade in a foreign country at war with Great Britain. *O'Mealey v. Wilson and another*, N. P. 1 Camp. 482.

19. A British-born subject resident in the English factory at Lisbon held entitled to a Portuguese character, so far as to render his trade with Holland (at war with England, but not with Portugal) not impeachable as an illegal trade. *Danous, note to Nayade, Mertz*, 4 C. Rob. 255.

20. A British subject cannot shake off his allegiance to his native country, or divest himself altogether of his British character by a voluntary transfer of himself to another country. He may, however, so transfer himself for the mere purposes of trade, and acquire a new national character. *The Ann, Smith*, 1 Dodson, 221.

21. A British-born subject who had resided in America some years, where he had been admitted a citizen and carried on business, his wife and family residing in this country, held not to be a British subject within the meaning of the Order of Council of the 28th of November, 1812. *Ibid.*

22. The rule of law being that a neutral domiciled in the enemy's country acquires an enemy national character, entailing condemnation of his property in a Prize Court, held that the same equity operates the other way, to protect the property of an enemy domiciled in a neutral country, as having a neutral national character. Restitution accordingly in such a case. *The Postilion, Hay & Marriott*, 245.

23. A person resident in this country by the licence and under the protection of the Sovereign is not to be regarded as an alien enemy. *Wells v. Williams*, 1 Ld. Raym. 282., 1 Salk. 46.; S. C. Lutw. 35., Com. Dig. Ab. (E.) 4., 3 B. & P. 114.; *Uspatrick v. Noble*, 13 East, 340., 1 Hale, P. C. 165., Dyer, 144 a.; *Sherley's Case*, 2 Anst. 407.

24. The native character held to be re-vested in the case of a native Frenchman, an asserted American subject, but personally present at St. Domingo, shipping goods for France, and described in the evidence as a French merchant. *La Virginie, Coigneau*, 5 C. Rob. 98.

25. A policy effected by a neutral on a voyage to a neutral or friendly port, held valid, although the neutral himself resided in a place occupied by the enemy. *Bromley v. Heseltine*, 1 Camp. 75.

26. The national character of persons settled in Demerara during British possession as to property seized before the declaration of hostilities, held to be Dutch, the declaration having a retroactive effect. *The Boedes Lust, Sybrandts*, 5 C. Rob. 233.

27. An Order in Council licensing a person to export and import certain goods to and from an enemy's country, does not authorize his residence and trading there. *Ex parte Baglehole*, 1 Rose, 271., 18 Ves. jun. 525.

28. Ship and cargo belonging to subjects of an ally, the cargo being military stores for the service of the war against the common enemy. proceeded against on the ground of the port of shipment, and in which the owners resided, being in possession of the enemy, restored. *The Santa Anna, Larrinago*, Edwards, 180.

(b) *What is sufficient to constitute domicile — et contra.*

29. There is no universally agreed definition of the word domicile — no agreed enumeration of the ingredients which constitute domicile. The gradation from residence to domicile consists both of circumstances and intention. Nice distinctions have and must prevail, such as cannot be defined beforehand. *Maltass v. Maltass*, 1 Robertson, 75.

30. Cases of domicile do not depend on residence alone, but on a consideration of all the circumstances of the case. *Moore v. Darell and Budd*, 4 Hagg. (Eccl.) 352.

31. In most cases, on the question of domicile, time is unavoidably conclusive; and though a party should go into a foreign country originally for a special purpose, if the purpose be of a nature that may probably or does actually detain him for a great length of time, a general residence might grow upon such a special purpose. *The Harmony, Bool*, 2 C. Rob. 322.

32. A special purpose may lead a party to a country where it might detain him the whole of his life. Against such a long residence the plea of an original special purpose could not be averred. It must be inferred, in such a case, that other purposes forced themselves upon him, and mixed with his original design, and impressed upon him the character of the country where he resided. *Ibid.*

33. If a man come into a belligerent country at or before the beginning of a war, it is certainly reasonable not to bind him too soon to an acquired character, and to allow him a fair time to disengage himself; but if he continue to reside during a great part of the war, contributing by payment of taxes and other means to the strength of that country, he could not plead his special purpose with any effect against the rights of hostilities. There is a time which will estop such a plea; no rule can fix the time *à priori*, but such a time there must be. *Ibid.*

34. If a man go into a belligerent country and remain there four years, employing

himself and his property in the trade of that country, *semble* that he is to be considered as a merchant of that country as to his property so employed. *The Two Brothers, M'Clousky*, 1 C. Rob. 131.

35. In order to acquire a domicile there must be actual residence in the place chosen, which must be the principal and permanent residence of the party. *Dalhousie v. M'Douall*, 7 Clark & Fin. 817.; see *Munro v. Munro*, *Ibid.* 842.

36. Mere expression of intention on the part of a neutral to settle in the enemy's country as an enemy merchant, *Held* not to clothe him intermediately with an enemy character, enuring to a forfeiture of his neutral rights. *The Falcon, Atkins*, 6 C. Rob. 198.

37. Where a person sets out for a foreign country then in amity with this, and it does not appear at what time he arrives there, or what time was afforded him after his arrival, and after the country became hostile, to take measures for quitting it during the period legally allowed, those disabilities which belong to a person who adheres to the King's enemies do not necessarily attach. *Roberts v. Hardy*, 3 M. & S. 533.; see 3 P. & P. 119., 1 Camp. 482., 2 N. R. 97.

38. Landed estate alone is not sufficient to constitute domicile, or fix the national character of the possessor not personally resident on it, except with regard to property going as the immediate produce of such estate. *The Dree Gebroeders, Vandyk*, 4 C. Rob. 235.

39. If a house of trade send a partner to France with an intention even of not mixing in any other trade than the business of that house, such a circumstance, connected with a permanent residence in France, would impress a French national character upon him. *The Harmony, Bool*, 2 C. Rob. 333.

40. An English merchant, partner in a house of trade at Guernsey, but resident in Holland, the enemy's country, though for the purpose only, as alleged, of recovering debts and partnership effects, *Held* to be invested with a Dutch national character, and cargo claimed by him condemned. *The Citto, Fehndrick*, 3 C. Rob. 38.

41. A *bond fide* residence of the owner of a vessel and his family, though subject to periodical interruption on his part occasioned by the nature of his professional avocations, *Held* to be decisive as to his national character. *The Junge Ruiter, De Ruiter*, 1 Acton, 116.

42. A native American who had resided in a British colony as clerk, and afterwards as merchant, fifteen years, had served in the military corps of the colony, taken the oaths of allegiance to his Britannic Majesty, had never taken any such oaths to any other state, and had only left in consequence of insolvency, *Held* to have an American national character, he having returned to America to carry on his mercantile transactions there. *The Matchless, Vint*, 1 Hagg. 99.

43. *Seemle*, that a neutral, voluntarily residing and carrying on commerce in an enemy's country, is an alien enemy to all civil purposes. *O'Mealey v. Wilson*, 1 Camp. 482. (Ellenborough.)

44. The deceased (the son of a British subject who resided for several years, up to his death, in Ireland, and had purchased property there), though occasionally claiming the privileges of a British subject and visiting England, but who was born, educated, established as a merchant, and died in Spain, *Held* to be clearly domiciled in Spain, and, consequently, that the law of Spain was to govern the disposition of his property. *Moore v. Darell and Budd*, 4 Hagg. (Eccl.) 346.

45. A Frenchman having quitted France in 1792 in consequence of the Revolution in that country, and having resided in England until 1814, when he returned to France, and from that time resided occasionally in both countries, *Held* not to have abandoned his original domicile. *De Bonneval v. De Bonneval*, 1 Curteis, 857.

46. A testator, born in America in 1764, went to Scotland, when a minor, for the purposes of education, and, after he had attained his majority, in 1788 sailed for India, describing himself in the ship's books as an American. He remained in India thirty years, when he returned to Europe, leaving the bulk of his property in Bengal, and afterwards, having been in America, visited England, Scotland, and the Continent, when he returned to America, entered into agricultural pursuits there, and continued to draw his property to that country until his death, at New York, in 1826: *Held*, that he was an American citizen. *In re Bruce*, 2 C. & J. 436, 2 Tyr. 475.

47. When a party is found residing in the enemy's country, he must explain the circumstances of his residence: the presumption arising from his residence is, that he is there *animo manendi*; and it lies on

him to explain it. *The Bernon, Dunn*, 1 C. Rob. 104.

48. A residence of four years, connected with a former residence of a year, in France (and which is to be considered, therefore, as a legal uninterrupted residence there), accompanied with a purpose of returning thither, will require (though it is questionable whether such a residence could be deemed capable of any explanation) an explanation clear and satisfactory, and supported in a satisfactory manner. A party so circumstanced, being a partner in an American house of trade, failing to give a satisfactory explanation, *Held* to have, by such residence, acquired a French national character, and his claim for goods seized as prize pronounced against accordingly. *The Harmony, Bool*, 2 C. Rob. 322.

(c) *Of the changes of domicile.*

49. A new domicile cannot be acquired during pupillage, or until the person is *sui juris*. *Somerville v. Somerville*, 5 Ves. 787.

50. The mere place of birth or death does not constitute the domicile. The domicile of origin, which arises from birth and connexions, remains until clearly abandoned and another taken. *Ibid.* 750.

51. The domicile of origin prevails until the party shall have acquired another, with an intention of abandoning the original domicile. The acquisition of a domicile does not depend simply upon the residence of a party. The change of domicile must be manifested, *animo et facto*, by the fact of residence and the intention to abandon. *De Bonneval v. De Bonneval*, 1 Curteis, 863.

52. The domicile of origin prevails until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile, and acquiring another as his sole domicile. *Dalhousie v. M'Douall*, 7 Clark & Fin. 817.; see *Munro v. Munro*, *Ibid.* 842.

53. The domicile of origin does not revive until an acquired domicile is finally abandoned. *Craigie and Craigie v. Lewin and Others*, 3 Curteis, 435.

54. An acquired domicile is not lost by mere abandonment, but continues till a subsequent domicile is acquired, which can only be *animo et facto*, unless the party die *in itinere* toward an intended domicile. *Munroe v. Douglas*, 5 Mad. 379.

55. The domicile of origin having been abandoned and a new domicile acquired,

the new domicile may be abandoned and a third domicile acquired. *De Bonneval v. De Bonneval*, 1 Curteis, 864.

56. The presumption of law being that the domicile of origin subsists until a change of domicile is proved, the *onus* of proof of the change is on the party alleging it; and this *onus* is not discharged by proof of residence, which is not inconsistent with an intention to return to the original domicile, for the change must be demonstrated by fact and intention. *Ibid.*

*See antè*, Nos. 31. to 37.  
45. to 48., and *post*, 62. to 69.

(d) *Of agents, how affecting principals.*

57. A residence of agents in the enemy's country is not generally held to impress the character of that country on the transactions of principals resident in a neutral country, where the transaction itself is in other respects perfectly neutral. The neutrality of the trade prevails against the effect of that circumstance. But where the trade itself cannot claim to be so considered, and is carried on from the enemy's country by agents representing the principals therein, *Semble* that the mere personal evidence of the principals elsewhere would hardly protect such a trade, so conducted, from being considered as the trade of an enemy. *The Rendsborg, Nyberg*, 4 C. Rob. 140.

(e) *Being Consuls.*

58. The office of Consul confers no privilege to distinguish the national character of the person bearing it from that of the country where he resides; and where an American Consul, resident in British India, was engaged, as a general merchant, in trade with the enemy of Great Britain, *Held*, that he was to be considered as a British merchant, and his property condemned by reason of the illegality of the trade. *The Indian Chief, Skynner*, 3 C. Rob. 22.

59. A British-born subject settled in the enemy's country, and holding the office of American Consul, claimed a ship (seized as prize) which had been purchased by him of an American owner, and continued to be documented as an American vessel: *Held, first*, that his domicile in the colony of the enemy, with an established house of trade, rendered him a subject of the enemy; *secondly*, that though the disposition of the American Government to confer

the privileges of American navigation on vessels occupied by their Consuls in foreign states might be proper enough for their own purposes of navigation, the rights of third parties were to be determined by the more correct principle of the Law of Nations. *Condemnation. The President, Welles*, 5 C. Rob. 277.

60. A Consul of a neutral state, resident in the enemy's country, is subject to all the disabilities of an enemy merchant as to the power of becoming a claimant in the Court of Admiralty; but he is not on that account necessarily disabled from introducing evidence before the Court; for the alien enemy is not generally disabled as a witness, and the cases of exception are few. *The Falcon, Atkins*, 6 C. Rob. 197.

61. An alien carrying on trade in an enemy's country, though resident there also in the character of Consul of a neutral state, *Held* to be an alien enemy, and as such disabled to sue, and his property liable to confiscation. *Albrect v. Sussman*, 2 V. & B. 323.

*See post*, No. 65.

3. *Where abandoning their former residence and returning to their native country.*

62. The character that is gained by residence ceases with residence. *The Indian Chief, Skinner*, 3 C. Rob. 20.

63. A mere intention to remove has never been held sufficient without some overt act. *The President, Welles*, 5 C. Rob. 280.

64. Claims of two Jews, asserting themselves to be subjects of a neutral state, but who appeared to have been resident some months in an enemy colony, and to be returning therefrom with the property in question to an enemy port in an enemy ship, rejected, and portion of cargo belonging to them condemned as enemy property. *Le Theodore, Hay & Marriott*, 258.

65. An American Consul resident in England, and carrying on trade there, but who had left this country with a *bona fide* intention of returning to America at the time of capture of the ship claimed by him, *held* to be in pursuit of his American character, which was thereby revived. *Restitution. The Indian Chief, Skinner*, 3 C. Rob. 12.

66. A British-born subject, who had been resident in Surinam and St. Eustatius, and had left those settlements with an intention of returning to England, but had only reached Holland, the mother-coun-

try of those settlements, when the war between this country and Holland broke out, and the capture of the vessel claimed was made, *Held* to be in itinere, and in pursuit of his native British character. Restitution. *The Snelle, Zeylder, cited in The Indian Chief, Skinner*, 3 C. Rob. 21.

67. Claims of British merchants settling in the Dutch colonies whilst in English possession, and resident there at the breaking out of the war, for property seized before hostilities on a voyage from thence to Holland, pronounced for. *The onus probandi* as to an intention of removing *held* to be relieved by the circumstance of the colonies having been in British possession till after the termination of the last war, taken in connection with the presumption raised by the stipulation of the treaty of Amiens, that persons so settled would remove on the restitution of the colonies to Holland; but other claims of persons who had settled before the period of British possession pronounced against, an intention of removing not being shown. *The Diana, Runke*, 5 C. Rob. 60.

68. The property of a British merchant settled in Holland, and taking early measures to withdraw on the breaking out of a war, restored. *The Ocean, Harmsen*, *Ibid.* 90., and note thereto.

69. An inhabitant of an island ceded by Great Britain who, immediately after its cession, came over to England, and, finding the climate not agree with his health, returned to the ceded island in which he had left his family, and resided with them there for upwards of six years, and then emigrated with them to another country under the government of Great Britain: *held* to retain the character of a British subject; and one of his children born after the capitulation of the island and before its final cession by treaty, not to be an alien. *Jephson v. Riera*, 3 Knapp, 130.

See *antè*, Nos. 31. to 37.,  
45. to 48., 49. to 56., and *post*,  
No. 76.

#### 4. Having partners in houses of trade with various domiciles.\*

70. Some persons emigrated from Nan-

tucket to France and there carried on a fishery very beneficial to the French. The property of a partner domiciled in France was condemned, the property of another partner, resident in America, was restored. *The Ospray, cited in The Vigilantia, Gerritz*, 1 C. Rob. 14.

71. Two persons, one resident at St. Eustatius, the other in Denmark, were partners in a house of trade at St. Eustatius. The one who resided there forwarded the cargoes to Europe, the other received them in Amsterdam, disposed of them there, and then returned to Denmark. *Held* that the share of the person resident in St. Eustatius was liable to condemnation as the property of a domiciled Dutchman, and that the share of the other partner should be restored; as the property of a neutral. *Haasum & East, cited in Ibid.*

72. A party having a house of trade in the enemy's country as well as in a neutral country is not to be considered in his whole concerns as an enemy's merchant, as well in those which respected solely his neutral house as in those which belonged to the belligerent domicile. Restitution as to property connected with the latter in the former house. *The Portland, Farrie, and nine other ships*, 3 C. Rob. 41.

73. A neutral merchant of Embden, having also a share in a house in London, *held* not to be precluded by that circumstance from averring an exclusive interest in his house at Embden in a shipment from the enemy's country to London. Restitution, notwithstanding his being in London at the time of shipment, but on an occasional errand only, and for a special purpose, pointing strongly to a permanent residence in Embden. *The Herman, Schroeder*, 4 C. Rob. 228.

74. Three brothers were engaged in partnership in a house of trade in America, where A., the managing partner, resided; B. and C. residing one in London and the other in Scotland. A cargo, consigned to the enemy solely by the direction of A., without the privity or direction of B. and C., condemned as to the shares of B. and C. also. *The Franklin, Dana*, 6 C. Rob. 127.

\* 1. A shipment made by a house of trade in the enemy country, on account and risk, *bonâ fide* and exclusively, of a neutral partner or house, is not subject to confiscation as prize of war. *The San Jose, Indiano*, 2 Gallison's (AMERICAN) Rep. 268.

2. The same principle applies in the converse case of a partner or agent domiciled in the enemy country, and making shipments to his neutral house or principal, on the exclusive account of the latter. *Ibid.*

5. *From occupation in the enemy's trade.*

75. There is a traffic which stamps a national character on the individual, independent of that character which mere personal residence may give him. *The Vigilantia, Gerritz*, 1 C. Rob. 15.

76. The domicile of the parties is not that alone to which the Court resorts in a time of war: At the commencement of a war, in the case of a person carrying on trade habitually in the country of the enemy, though not resident there, he should have time to withdraw himself from that commerce. But if a person enter into a house of trade in the enemy's country in time of war, or continue that connection during the war, he cannot protect himself by mere residence in a neutral country. *Ibid.*

77. A single man, who had established no domicile by family connexions, and in his own person had been employed constantly for ten years in trading from Amsterdam to Greenland, although born a Prussian, *held*, by such occupation to be divested of his national character, and to have become by adoption a perfect Dutchman. *The Embden, Meyer*, *Ibid.* 17. Affirmed on appeal to the Lords Commissioners of Appeal in Prize Causes, 10th of February, 1800.

78. A fisherman, by birth a Dutch (enemy) subject, who had become, by seven years' domicile, a Prussian (neutral) subject, and who fished off the Dutch coast, sold his cargoes to English vessels, and occasionally went in to Dutch ports for bait only, *held* not to be engaged in such an employment in the fishing trade of the enemy as would re-vest his original character against the effect of his domicile; and that to hold otherwise would be to press the doctrine of occupation too rigidly against a class of cases usually treated with peculiar lenity and forbearance. *The Liesbet Van Den Toll, Heest*, 5 C. Rob. 283.

*See post, Nos. 112. to 116.*

*See TRADE WITH THE ENEMY.*

6. *From the transfer by the enemy of their trading privileges to them.*

79. A contract with the superintendent of the Spanish settlements at the Caraccas, the effect of which was to give a privileged monopoly of the tobacco trade of those settlements for three years, guarded by other privileges of a high nature, *Held* to confer the entire benefit of a Spanish cha-

racter, *quoad* that transaction, in an otherwise neutral merchant, more especially where he had a stationed resident agent at the Caraccas, for the purpose of facilitating the performance of the contract. *The Anna Catharina, Wupper*, 4 C. Rob. 118.

80. Such a national character as to such a transaction *Held* to attach on parties accepting such a contract from the original contractor. *Ibid.*

81. Several cargoes were taken on a voyage from Batavia to Copenhagen, and claimed by a neutral Danish merchant, as forming part of very large portions of the commodities of that settlement, purchased by him under contracts with the Dutch East India Company, who were entitled to the exclusive trade with that settlement under peculiar privileges transferred in those contracts to the neutral. Such contracts being of a gigantic nature, of the magnitude of extraordinary speculation far beyond the bounds of ordinary commerce, and having been manifestly entered into by the Dutch belligerent solely in consequence of the distress to which he was reduced by the war, *Held* to be illegal, as substituting the neutral in place and for the relief of the distressed belligerent, with all the rights and privileges of a peculiarly favoured corporation belonging to the belligerent country. Cargoes condemned accordingly. *The Rendsborg, Nyberg*, 4 C. Rob. 121.

*See post, Nos. 148, 149.*

7. *Being mariners.*

82. A master of a vessel, though by birth a Dane, and having a wife and family resident in a neutral country, whose own personal occupation had always been in Dutch trade, *Held* to be, with reference to a prize engaged in the Dutch trade, *pro hac vice* a Dutchman, under the general rule that the national character of mariners is to be determined by the country in whose service they are employed. *The Endraught, Bonkins*, 1 C. Rob. 24.

83. It is a settled doctrine of law that when a subject of one country enters into the service of a ship belonging to the subjects of another country, he is to be considered *pro hac vice* to be a subject of that country to which the vessel belongs. *The Golubchick, Bernardos*, 1 W. Rob. 150.

84. The character of seamen is concluded by the character of the ship. The shares of a master and mariners, American subjects, on board a French (enemy) whale



ship condemned. *The Frederick, Worth*, 5 C. Rob. 8.

85. A master of a vessel, by birth a Prussian, who had recently taken a burgher's brief at Riga, for the purpose of navigating in the Russian trade, but having his domicile in Prussia, where his wife and family were still residing, held not to have acquired a Russian national character within the meaning of the Russian treaty. *The Eleonora Wilhelmina, Zimmerman*, 6 C. Rob. 331.

#### 8. Other cases.\*

86. Asserted neutrals Held on facts to have acquired enemies' national characters. Condemnation. *The Graaff Bernstorff, Belmer*, 3 C. Rob. 115.; *The Phoenix, Susini*, Ibid. 186.

87. Neutral claimants asserted to have acquired enemies' national characters, Held to be neutrals. *The Restitution, Vriendschap*, 4 C. Rob. 166.

88. In the case of a strict exclusive colonial trade from the colony to the mother country, where the trade is limited to native subjects by the fundamental regulations of the state, and the national character is required to be established by oath, whoever asserts himself to be the proprietor by the solemn averments of an oath takes the fortunes of the community as to that property, independently of peace or war. *The Vrouw Anna Catherina, Mahts*, 5 C. Rob. 167.

89. A child of British parents would, though born abroad, be a British subject, and owe allegiance to the Crown of Great Britain, whatever might be the domicile of his parents or of himself. The only excepted cases to this rule are those of the children of persons whose domicile was in the United States prior to the acknowledgment of the independence of America. *Maltass v. Maltass*, 1 Robertson, 72.

90. A corporation of British subjects in a foreign country, existing for objects in opposition to British law, and under the control of a foreign government, is not entitled to claim any compensation for the confiscation of its property from the government of the country in which it existed under a treaty giving that right to

British subjects. The individual members of such a corporation are also equally incapacitated from making any claim as British subjects for the loss of their income arising from the funds of such a corporation. *Daniel v. Commissioners for Claims on France*, 2 Knapp, 23.

91. A corporation of Irishmen existing in a foreign country and under the control of a foreign government must be considered as a foreign corporation, and is not therefore entitled to claim compensation for the loss of its property under a treaty giving the right of doing so to British subjects. *Semble*, that it makes no difference whether the purposes for which such a corporation existed were or were not contrary to the law of Ireland. *Long v. Commissioners for Claims on France*, Ibid. 51.

92. A British subject entered into the service of France, and took the oath of a Knight of the order of St. Louis. Whilst resident in France he married, and had a son born there. At the commencement of the Revolution he and his son joined the army of the Prince de Condé, and afterwards accepted commissions in the Irish brigade in the British service, but they were taken prisoners on their journey to join their regiment. The father's property was confiscated by the French government, and he shortly afterwards died. The son returned to France with the Bourbons, and entered into the French service. Held, that under the treaty providing compensation for the losses of British subjects from French confiscations, the son, as the father's representative, was entitled to compensation for such losses, on the ground that the father had not by such acts lost his national character as a British subject acquired by birth nor assumed a French character. *Count Wall's Case*, 3 Knapp, 13.

93. A person who possesses the characters both of a French subject under the municipal law of France, and of a British subject under the stat. 13 Geo. 3. c. 26. as the grandson of a natural-born British subject, although both he himself and his father were born in a foreign country, is not entitled to claim compensation for a loss he has sustained from a confiscation of his property by the French government

\* 3. A lady born in America after the date of the Declaration of Independence, but before the treaty by which it was recognised by Great Britain, and whose father, a native colonist, acquiesced in the declaration, and thereafter continued to reside

in America as a citizen thereof, Held, in a question as to terce, to be a natural-born subject of the King of Great Britain, and therefore not liable to the objection of alienage. *Lady Nisbet v. Sir J. Nisbet's trustees* (1834), 12 S. 283. (Scotch Rep.)

under a treaty between Great Britain and France giving compensation for such a loss to British subjects. Appeal from award of Commissioners so made pronounced against. *Drummond's Case*, 2 Knapp, 295.

94. A British subject duly and formally naturalised in France, and whose property has been confiscated by the French government, cannot claim under a treaty between Great Britain and France, giving compensation for such losses to British subjects. *Ibid.* 301. n. 314.

95. Where it is possible for a person to be the subject of two nations, his acts and conduct must be enquired into, in order to determine which nation he has elected as his country. So where a person was born in the United States of America previously to the acknowledgment of their independence by Great Britain by the treaty of September, 1783, and continued to reside in them both before and after that time, *Held*, that he had become an American citizen, and that his child, born after the date of the treaty in America, was an alien. Where, however, a person born in the United States left there on the execution of the treaty with the British army, in which he had served during the war, but after an absence of two years returned in the character of British Commissioner, and on the completion of his duties in that capacity, resided there as a private individual until his death, *Held* that he had not put off his allegiance to Great Britain, and that his children born in America after his return to it were within the stat. 4 Geo. 2. c. 21. and entitled to inherit lands as British subjects. *Ibid.* 327. n.; S. P. *The Indian Chief*, *Skinner*, 3 C. Rob. 14.

96. A foreigner domiciled in Great Britain at the period of confiscation of his property is entitled to claim compensation for his losses under a treaty providing such compensation to British subjects. *André's Case*, note to *Countess de Conway's Case*, 2 Knapp, 365.

97. The fact of a foreign lady being the wife of a British subject is not sufficient to entitle her to compensation for the loss of her separate property under a treaty providing such compensation for British subjects, unless she had herself acquired a domicile in Great Britain at the time of

her loss. Appeal dismissed accordingly. *Countess de Conway's Case*, *Ibid.* 364.

98. Under the same treaty, *Held* that the fact of the confiscation of a lady's separate property having taken place on the ground that she was the wife of a British subject, was not sufficient to entitle her to indemnity as a British subject under the treaty; nor was the circumstance of her having been, in point of fact, the wife of a British subject. *Ibid.* 367.

*See ante*, No. 9.

*See* ALIENS.

### III. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO VESSELS.

#### 1. Generally.\*

99. Where there is nothing particular or special in the conduct of a vessel itself, the national character is determined by the residence of the owner, but there may be circumstances arising from that conduct which will lead to a contrary conclusion. *The Vigilantia*, *Gerritz*, 1 C. Rob. 13.

100. A register is not a document required by the Law of Nations, as expressive of a ship's national character. *Le Cheminant v. Pearson*, 4 Taunt. 367.

#### 2. Purchased by neutrals of enemies.

101. The purchase of an enemy's vessel by a neutral is allowable, but obnoxious to much suspicion. The suspicion will be still further increased, and the Prize Court will exert its utmost power of research, where it appears that the asserted neutral was a person then resident in the enemy's country; the presumption arising from such residence is, that he was there *animo manendi*, and it lies on the claimant to explain it. Condemnation. *The Bernon*, *Dunn*, 1 C. Rob. 102.

102. An enemy's vessel ostensibly transferred to a neutral, but continuing in the enemy's trade, manned by subjects of the enemy, and sailing from and to an enemy's port, condemned, the Court holding the transfer to be collusive. *Semble*, condemnation would have followed under such circumstances, even had the transfer been *bond fide*. *The Vigilantia*, *Gerritz*, 1 C. Rob. 1.; *The Embden*, *Meyer*, *Ibid.* 17.

\* 4. A cartel ship is *pro hac vice* a neutral licensed vessel, and all persons concerned in her navigation, upon the particular service in which both belligerents have employed her, are neutral in

respect to both, and under the protection of both. *Crawford et al. v. William Penn, Peters* (AMERICAN) Circ. C. Rep. 106.

103. The sale of ships of the enemy to a neutral is not prohibited, but it must be absolute and *bond fide*. Any equity of redemption or other defeasance will be considered to keep the title still in the enemy. *The Sechs Geschwistern*, *Jobs*, 4 C. Rob. 100.

104. A vessel was sold in a blockaded port by a neutral, who had himself purchased of the enemy since the commencement of hostilities, and was taken coming out of the blockaded port. Further proof refused. Condemnation. *The Vigilantia*, *Reynaert*, 6 C. Rob. 122.

105. A licence was obtained to purchase a vessel out of the hands of an enemy merchant at Antwerp, with a view of recovering a bad debt. The agent of the purchaser gave a bond to the French government for the restitution of the ship at the conclusion of the war: *Held*, that as the claimant did not know of this requisition for the bond at the time he obtained the licence from his own government, he could not be charged with the suppression of it; and the agent having made the terms, the principal must accede to them to indemnify the agent. The Court distinguished the case from that of persons going into the enemy's country and becoming the asserted purchasers of vessels which the enemy is induced to make over *pro tempore* on account of the war. *The Clio*, alias *William Pitt*, *Schaken*, *Ibid.* 67.

See TITLE.

### 3. Navigating under enemy's flag and pass.

106. If a vessel navigate under the pass of a foreign nation, she is considered as bearing the national character of that nation under whose pass she sails; she makes a part of its navigation, and is in every respect liable to be considered as a vessel of that country. *The Vigilantia*, *Gerritz*, 1 C. Rob. 13.

107. Ships have a peculiar character impressed upon them by the special nature of their documents, and have always been held to the character with which they have been so invested, to the exclusion of any claims of interest that persons living in neutral countries may actually have in them. So that where a vessel was taken sailing under the flag and pass of the enemy, they were *held* to be conclusive as to the character of the ship. Condemnation thereof accordingly. *The Vrouw Elizabeth*, *Probst*, 5 C. Rob. 2. n.; *The Diana*, *Hunt* (Lords, 1st March, 1806).

108. The flag and pass of a nation taken up in war or peace bind the vessel almost without exception. *The Vrouw Anna Catharina*, *Mahts*, 5 C. Rob. 167.

109. A vessel under a Dutch flag with a Dutch pass bound from the Cape of Good Hope (which had then recently become an enemy colony) to St. Helena, America, Amsterdam, or London, as the supercargo should consider most eligible, was purchased by a Dutch enemy merchant resident at the Cape, but, as asserted, nominally only and in reality for the account of British merchants resident at the Cape and desirous of removing their property to this country, the cargo on board being the proceeds of their Cape property. By means of such purchase by the Dutch merchant the vessel acquired all the advantages of a Dutch character. Ship condemned as enemy property (affirming the decision of the Vice-Admiralty Court of Barbadoes). As to the cargo, *semble*, that it is essentially necessary to show the intention of the shippers to be that of absolute removal of themselves and their effects to obtain restitution of their interests in the cargo. Restitution of part of cargo where such intention was proved to have been carried into effect. *The Goede Hoop*, *Van Thuyssen*, 2 Acton, 32.

110. The fact of a vessel sailing under a particular nation's flag and pass cannot be considered as conclusive evidence of her belonging to that country. The effect of a flag and pass is, that the party who takes the benefit of them is himself bound by them, and not at liberty when they turn to his disadvantage to deny the character which he has worn for his own benefit; but as against him they do not bind other parties, who are at liberty to show that these are spurious credentials, and it is the duty of the Court to detect such disguises. *The Fortuna*, *Verrissimo*, 1 Dodson, 87.; *The Success*, *Smith*, *Ibid.* 130.

111. In slave seizures, the flag carried by the slave-ship does not fix the national character of the vessel. *The Eagle*, *Litty*, 1 W. Rob. 246.

See *post*, No. 145.

### 4. Navigating in the enemy's trade.

112. If a vessel purchased in the enemy's country be by constant and habitual occupation continually employed in the trade of that country, commencing with the war, continuing during the war, and evidently

on account of the war, that vessel is to be deemed a ship of the country from which she is so navigating. *The Vigilantia, Geritz*, 1 C. Rob. 13.

113. Where a vessel is transferred from an enemy to a neutral and continues in the enemy's trade, the neutral cannot protect her, because he has no seaport of his own. The ports of other neutral countries are open to him, and if he confine his vessel exclusively to the enemy's navigation he is liable to be considered as an enemy with respect to the concerns of such a vessel. *The Endraught, Broetjas*, Ibid. 20.

114. Pursuing one voyage in the coasting trade of the enemy would not be sufficient to fix a hostile character, but a habit of such trading would. *The Welvaart, Cornelis*, Ibid. 123.

115. Where a ship asserted to have been transferred is continued under the former agency and in the former habits of trade, such facts are conclusive against the genuineness of the transfer. *The Omnibus, Tennes*, 6 C. Rob. 71.

116. In England and most other European countries, the coasting trade has not been open to foreign vessels. Habitual employment in the coasting trade of the enemy will stamp a neutral vessel with the hostile character. *The Welvaart, Cornelis*, 1 C. Rob. 124. Condemnation for such trading with false papers. *The Johanna Tholen, Osterlo*, 6 C. Rob. 72.

*See antè*, Nos. 75 to 78.

*See TRADE WITH THE*

ENEMY.

##### 5. Of the change of—in transitu.

117. When a ship sails in a particular character she cannot change her character in transitu. *The Negotie en Zeevaart*, cited in *The Danckebaar Africaan, Smit*, 1 C. Rob. 112.; *The Herstelder, De Koe*, Ibid. 116.

*See post*, Nos. 141. to 144.

##### 6. Other cases.

118. A British vessel was taken by the French and carried into an American port. The British Consul interposed, and the subordinate Court in America restored the vessel as having been captured in violation of their particular neutrality. An appeal was taken to the higher Court, and by agreement, to prevent the ship from rotting in a harbour during the pendency of the appeal, she was sold, the proceeds to remain subject to the ultimate event of the

suit. In this state of things, she was purchased by an American merchant on account of the former owners, if they should elect to take her, if not, on account of other British merchants. The vessel then sailed for Jamaica without her register, which the French Consul refused to give up: *Held*, as to revenue laws, that she had not changed her national character but remained a British vessel. Affirmed on appeal to the Delegates, 1st July, 1800. *The Betty Cathcart, Gillespie*, 1 C. Rob. 220.

119. The holder of a bottomry bond made in time of peace on a vessel of a country becoming an enemy, cannot, on the capture of such vessel, claim payment out of the proceeds in the Prize Court. The bottomry holder acquires the *jus ad rem*, but not the *jus in re* until it has been converted and appropriated in a court of justice. The property of the vessel continues in the former proprietor, who has merely given a right of action against it, and as the property is not changed the national character is not changed. *The Tobago, De Witte*, 5 C. Rob. 218.

120. A ship was sold by an American (neutral) to a Spanish (enemy) merchant in Buenos Ayres, and for the security of the purchase which was covenanted to be paid in London, (20,000 dollars at the first instalment,) the Spaniard shipped a quantity of tallow consigned to the agents and correspondents of the American in London, and delivered the bills of lading to him to be forwarded to those agents, and they were accordingly forwarded, together with instructions from him to the same agents to procure insurances on the contents; when received, the proceeds of the tallow over and above 20,000 dollars, the insurance, &c., were to be paid over by the consignees in London to the supercargo on board the ship: *Held*, that the lien which the former owner might have retained on the property for the purchase-money was not such an interest as would support a claim of property in a Court of Prize. Captors are supposed to lay their hands on the gross tangible property, on which there may be many just claims outstanding between other parties which can have no operation as to them. *The Marianna, Posadillo*, 6 C. Rob. 24.

121. Moreover, a legal transfer of the property had been made, and the mode of payment, whatever it was, had been accepted. The contingencies of that payment the Court did not regard. *Ibid*.

122. A vessel under the American flag, American built and American owned, must be presumed to be furnished with an American flag and pass, or, if otherwise, being furnished with documents usually granted to American ships, the same rule of law must be applied as if she had been furnished with a regular flag and pass. *The Ann, Smith*, 1 Dodson, 222.

See NAVIGATION LAWS.

#### IV. OF THE NATIONAL CHARACTER THAT WILL BE IMPUTED TO OTHER PROPERTY.

##### 1. Generally.

123. The general rule is, that personal property follows the rights of the person; that if, at the time of seizure, he is entitled to restitution, and, at the time of adjudication, to claim, he must be entitled to restitution; but this rule is liable to be altered by particular exceptions. Distinct characters may be affixed on particular parts of property which may make them liable to be treated in a different manner from the general property of the same person. *The Herstdeler, De Koe*, 1 C. Rob. 115.

##### 2. As dependent on the question of ownership.\*

###### (a) Generally.

124. The general rule is that in time of war property shipped to the enemy as soon as shipped vests in the consignee, or, to express it more accurately, the captor has a right to have his taking possession considered as equivalent to an actual delivery to the enemy, and he succeeds to all the enemy's rights. *The Packet De Bilbao, Depucheta*, 2 C. Rob. 133.

125. But where property was shipped by British to Spanish merchants before a war had broken out between England and Spain, and it appeared that it was the custom of that trade, and that there was also a contract that the property should remain at the risk of the consignor until it reached the consignee; *Held* that it was British property and should be restored. Captors' expenses allowed. *Ibid.*

126. Where silver was taken going from a French port to Hamburg, and it not appearing whether it was shipped in payment for cargoes already received, *Held*

that if on further proof it did so appear, it would not be treated as enemy property, but *aliter*, if shipped for cargoes to be received. *The Carolina*, 1 C. Rob. 305.

127. A claim of a British merchant for dollars documented as Spanish property on board a Spanish ship from Buenos Ayres to Spain rejected, England and Spain being at war. *The Princessa Zavala*, 2 C. Rob. 31.

128. Specie consigned by an enemy shipper and his agent in Hamburg for the purpose of answering drafts of his correspondent in America, without any letter of advice or document putting it out of his control, *Held* to be the property of the shipper. *Condemnation. The Josephine, Fish*, 4 C. Rob. 25.

129. Where the bill of lading described the property as shipped "for neutral account," but satisfactory proof was not produced indicating for whom it was purchased, *Held* that the property remained in the shipper. *Condemnation. The Jonge Pieter, Ibid.* 79.

130. Where goods are going to become the property of the enemy immediately on arrival, they are subject to confiscation as enemy property. *The Anna Catharina, Wupper, Ibid.* 111.

131. A favourable distinction has, however, been admitted in the cases of contracts made before and without any contemplation of a war. *Ibid.*

132. But a contract so made but carried into execution after the breaking out of hostilities is not within the exception. *Ibid.*

133. Such a contract made between enemies is inoffensive, but if the shipper become a neutral after the contract and before the execution of it, and the shipment take place afterwards, it is not within the exception. *Ibid.*

134. It is not permitted to the claimant to aver that goods shipped under such contracts are not contract goods. *Ibid.*

135. Goods sent by a merchant in Holland to A. in America by order and for account of B., but with directions to A. not to deliver them unless satisfaction could be given for the payment, *Held* not to be divested out of the Dutch shipper, and condemned accordingly as enemy property. *The Aurora, Lindberg, Ibid.* 219.

\* 5. A cargo, although purchased and shipped in Holland, then at war with Great Britain, on board a neutral vessel, yet being proved by the bill of lading and other papers to be the property of a

merchant in Hamburg, then in neutrality, *Held* not liable to condemnation as prize. *O'Neale v. Cordes and Gronemeyer* (1805), 13 F. C. 221, *Mor. No. 2. App. Prize.* (Scotch Rep.)

136. Goods shipped in an enemy port to A., an Irish merchant, under a licence, but the bills of lading of which were, before the ship sailed, altered "to the order of the shippers," condemned as enemy property, the Court holding that the property, in consequence of the alteration of the bills of lading, was not divested out of the hands of the enemy shipper nor protected by the licence, the terms of which required that such goods should be the property of and imported by A. *Ibid.* 218.

137. A ship was sold by an American (neutral) to a Spanish (enemy) merchant in Buenos Ayres, and for the security of the purchase, which was covenanted to be paid in London (20,000 dollars at the first instalment), the Spaniard shipped a quantity of tallow consigned to the agents and correspondents of the American in London, and delivered the bills of lading to him to be forwarded to those agents, and they were accordingly forwarded, together with instructions from him to the same agents to procure insurances on the contents. When received, the proceeds of the tallow over and above 20,000 dollars, the insurance, &c., were to be paid over by the consignees in London to the supercargo on board the ship; *Held*, as to the goods said to be going as the funds out of which the first payment for the ship was to have been made, that the fact that they were going for the payment of a debt would not alter the property; there must be something more; even if bills of lading were delivered, that would not be sufficient unless accompanied with an understanding that he who holds the bills of lading is to bear the risk of the goods as to the voyage and as to the market, otherwise, though the security may avail *pro tanto*, it cannot be held to work any change in the property. The insurance, too, made by the agents of the American could not work such a change, inasmuch as the goods could not have been insured as his property while the risk of the market was to fall on the Spanish shipper. *The Marianna, Posadillo*, 6 C. Rob. 24.

138. Indorsement over to an enemy consignee of a bill of lading of a parcel of goods, as to which the master deposed that he believed they would have become the property of the consignee on arrival,

*Held* to work such a transfer of the property as to render them liable to confiscation. *The Neptunus, Bachman*, *Ibid.* 409.

139. It is a settled principle in the Court of Admiralty that in order to constitute an effectual transfer of property to the consignee there must be either an order for the goods or an acceptance of them by him, in default of either of which they must be considered as the property of the consignors. *The Cousine Marianne, Deboer, Edwards*, 347.

140. Specie being to the consignment of British subjects in this country, though from an enemy port, restored. *The Catharina Elizabeth, Sjobeck*, 1 Acton, 309.

(b) *Of the change of — in transitu.\**

141. Property sent from a hostile colony cannot change its character *in transitu*, although the owners become British subjects by capitulation before the capture. *The Danchebaar Africaan, Smit*, 1 C. Rob. 107.

142. It is not always true that property is considered to remain in the same character in which it was shipped till the delivery. This is true in a state of war existing or imminent, when it is *Held* that property as a general rule cannot be converted *in transitu*. But if shipped before hostilities and transferred by a contract valid as between the parties, and *bond fide*, that contract will not be disregarded by the Prize Court. *The Vrow Margaretha, Crigsmen*, *Ibid.* 336.

143. A cargo of brandies transferred *in transitu* from a Spanish merchant to a neutral before the breaking out of hostilities with Spain, the transfer being *bond fide*, and war not being imminent at the time, restored, on a claim by the neutral. *Ibid.*

144. In time of war it is the rule of the Prize Courts that property going to be delivered in the enemy's country and under a contract to become the property of the enemy immediately on arrival is, if taken *in transitu*, to be considered as enemy's property, on the principle that capture is to be considered as delivery. In time of peace, however, the rule is that property is not divested between the vendor and vendee till actual delivery. *The Sally*,

\* 6. In time of war property is not permitted to change its national character in its transit, nor shall property consigned to become the property of

the enemy on arrival be protected by the neutrality of the shipper. *The Ann Green and cargo*, 1 Gallison's (AMERICAN) Rep. 289.

*Griffiths, note to The Atlas, Kimbell, 3 C. Rob. 300.*

*See antè, No. 117., and post, No. 149.*

3. *As affected by the national character of the ship.*

145. Some countries have gone so far as to make the flag and pass of the enemy conclusive of the cargo as well as the ship; but England has never carried the principle to that extent. It holds the ship bound by the character imposed upon it by the authority of the government from which all the documents issue. But goods which have no such dependence upon the authority of the state may be differently considered. Condemnation accordingly in such a case of the ship, but an undivided share of cargo, the property of the neutral owner of the ship and claimed by him, decreed to be restored. *The Vrow Elizabeth, Probst, 5 C. Rob. 2. n.; The Diana, Hunt (Lords, 1st March, 1806).*

*See antè, Nos. 106. to 111.*

4. *As dependent on the national character of the soil of which it is the produce.*

146. It is a settled rule that the possession of the soil impresses on the owner the character of that country, as far as the produce of that plantation is concerned, in its transportation to any other country, whatever the local residence of the owner may be. Produce of a plantation in the colony of the enemy belonging to neutral claimants residing in neutral territory, condemned. *The Phoenix, Wildeboer, 5 C. Rob. 21.; S. P. The Drie Gebroeders, Vandyk, 4 C. Rob. 235.*

147. The produce of a person's own plantation in the colony of the enemy, though shipped in time of peace, is liable to be considered as the property of the enemy, by reason that the proprietor has incorporated himself with the permanent interests of the nation as a holder of the soil, and it is to be taken as a part of that country in that particular transaction, independent of the proprietor's own personal residence and occupation. *The Vrow Anna Catharina, Mahts, 5 C. Rob. 167.*

*See antè, No. 38.*

5. *Under illegal contracts.*

148. Contracts of purchase effected with

a neutral on the part of a belligerent, but left executory as to payment, and contingent on a delivery at an ulterior port at the risk of the neutral merchant, are not allowed in time of war. Cargo sailing under such a contract and taken *in transitu*, Held to be enemy's property, and condemned accordingly. *The Atlas, Kimbell, 3 C. Rob. 299.; and The Sally, Griffiths, note thereto.*

149. It cannot be said that all engagements in the proximity of war, into which the speculation of war might enter, as for instance with regard to the price, would therefore be invalid. The contemplation of war is undoubtedly to be taken in a more restricted sense. But if the contemplation of war lead immediately to the transfer and become the foundation of a contract that would not otherwise be entered into by the seller, and this be known to be so done in the understanding of the purchaser, though on his part there may be other concurrent motives, as in the case of *The Rendsborg*, such a contract cannot be held good, on the same principle that applies to invalidate a transfer *in transitu* in time of actual war. Condemnation of property claimed under such a contract. *The Jan Frederick, Bloedorne, 5 C. Rob. 128.*

*See antè, Nos. 79. to 81.*

6. *Other cases.*

150. The property of British merchants, even shipped before the war with Spain, yet if in a Spanish character and in a trade so exclusively peculiar to Spanish subjects as that no foreign name could appear in it, must take the consequences of that character, and be considered as Spanish property. *The Princessa Zavala, 2 C. Rob. 52.*

151. An asserted American merchant, having gone to France to collect outstanding debts, invested part of the money received in sending a cargo of butter to Lisbon "because that port afforded a favourable market." The cargo seized as prize, and claimed by him, Held to be a voluntary mercantile speculation in the enemy's trade, and investing the claimant with an enemy national character *pro hac vice*. Condemnation. *The Drie Gebroeders, Vandyk, 4.C. Rob. 232.*

*See PRIZE.*

## NAVIGATION LAWS.

## I. GENERAL CONSIDERATIONS AS TO —, 248.

## II. OF THE CONSTRUCTION OF —, 249.

## III. AS TO BRITISH SHIPS, 250.

1. *What ships are to be considered as —*, 250.
2. *Who may be owners of —*, 250.
3. *Of the registry of —*, 251.
  - (a) *Of the transfer of —*, 251.
  - (b) *De novo*, 253.
4. *Of the title to —*, 253.
5. *Of the requisites to entitle to the privileges of —*, 254.
6. *Of the rights and privileges of —*, 254.
  - (a) *Generally*, 254.
  - (b) *Where forfeited — et contra*, 254.
7. *Of the manning of —*, 254.
  - (a) *Breaches of — et contra*, 255.

## IV. AS TO THE BRITISH POSSESSIONS ABROAD, 255.

1. *Generally*, 255.
2. *Breaches of — et contra*, 256.

## V. AS TO FOREIGN SHIPS, 257.

## VI. OF THE JURISDICTION OF COURTS AS TO —, 257.

1. *Generally*, 257.
2. *Of Vice-Admiralty Courts*, 257.

## VII. WHO AND WHAT WITHIN THE OPERATION OF — ET CONTRA, 258.

1. *The Crown and Crown property*, 258.
2. *Prize property*, 258.
3. *Other property*, 258.

## VIII. WHAT WILL AMOUNT TO A BREACH OF — ET CONTRA, 258.

1. *What will constitute an exportation — et contra*, 258.
2. *What will constitute an importation — et contra*, 258.

## IX. OF THE PENALTIES OF —, 259.

1. *What circumstances will exempt from — et contra*, 259.
2. *Forfeitures, how affecting —*, 260.
3. *How affecting the ship and remainder of cargo*, 260.

## X. OF THE ONUS PROBANDI IN CAUSES OF —, 260.

## XI. OF THE PRIORITY OF FORFEITURES, 261.

## XII. OF SEIZURES FOR BREACHES OF —, 261.

## XIII. MISCELLANEA, 261.

See MORTGAGES, SHIP'S REGISTERS, TITLE.

## 1. GENERAL CONSIDERATIONS AS TO — \*

1. The Courts of this country will not take notice of the revenue laws of foreign states; (*James v. Cathernwood*, 3 D. & R.

190.; *S. P. Planche v. Fletcher*, 1 Dougl. 251.†) nor investigate the decision of a foreign Court of Admiralty thereon. *The Jeune Voyageur, Guerard*, 5 C. Rob. 1.

2. Every country has a right to enforce

\* 1. These laws form an important branch of Maritime Law. In this country they are understood to comprise the various acts that have been passed, defining British ships, the way in which such ships are to be manned, the peculiar privileges enjoyed by them, and the conditions under which foreign ships shall be allowed to engage in the trade of the country, either as importers or exporters of commodities, or as carriers of commodities from one part of the country to another.

The origin of the Navigation Laws of England may be traced to the reign of Richard II., or perhaps to a still more remote period. It is sufficient, however, to observe that in the reign of Henry VII. two of the leading principles of the late Navigation Laws were distinctly recognised in the prohibition of the importation of certain commodities, unless imported in ships belonging to English owners and manned by English seamen. In the early part of the reign of Elizabeth (5 Eliz. c. 5.), foreign ships were excluded from our fisheries and coasting trade. The republican parliament gave a great extension to the Navigation Laws by the act of

1650, which prohibited all ships of all foreign nations whatever from trading with the plantations of America, without having previously obtained a licence. These acts were, however, rather intended to regulate the trade between the different ports and dependencies of the empire, than to regulate our intercourse with foreigners, but in the following year (1651) the republican parliament passed the famous *Act of Navigation*. This act declared that no goods or commodities whatever of the growth, production, or manufacture of Asia, Africa, or America, should be imported either into England or Ireland, or any of the plantations, except in ships belonging to English subjects, and of which the master and the greater number of the crew were also English. It further enacted that no goods of the growth, production, or manufacture of any country in Europe should be imported into Great Britain except in British ships, or in such ships as were the real property of the people of the country or place in which the goods were produced, or from which they could only be, or most usually were, exported. Such were the leading provisions



its own Navigation Laws, so far as it does not interfere with the rights of others. *Le Louis, Forest*, 2 Dodson, 253.

3. Whoever trades with a country, be he foreigner or not, is bound to know the laws of that country, as far as they concern his own acts, be the nature or extent of those laws what they may. If he trade under advice of a competent party, which proves to be erroneous, or under an authority which is insufficient, he is not thereby relieved from the penalties consequent on any infraction of the law. *The Adams, Tubbs*, Edwards, 310.

4. Parties coming to trade in any country are bound to know the laws of that country. *The Vixen, Hutchings*, 1 Dodson, 145.

5. Revenue cases are subject to considerations different from licence cases. *The Renard, Selkrig*, 2 Dodson, 271.

6. Where the fact is certain and the ex-

planation doubtful, the Court will abide by the fact and not the explanation. *The Union, Putnam*, 1 Hagg. 36.

7. The right of trading from ports of one country to those of another would not be affected by a transshipment in an intermediate port, and *semble*, where no such right existed. *The Matchless, Vint*, Ibid. 106.

## II. OF THE CONSTRUCTION OF —

8. The Revenue and Navigation Laws are certainly to be construed with great exactness: they are framed for the security of great national interests; and the effect of such laws, founded on great purposes of public policy, must not be weakened by minute tenderness to particular hardships. At the same time, it is not to be said that they are not subject to all considerations of rational equity, such as

of this act, and they were afterwards adopted by the regal government which succeeded Cromwell, and form the basis of the act of the 12 Car. 2. c. 18., which continued to a very recent period to be the rule by which our naval intercourse with other countries was mainly regulated, and has been designated the *Charta Maritima* of England. In 12 Car. 2. c. 18. the clause against importing foreign commodities except in British ships, or in ships belonging to the country or place where the goods were produced, or from which they were exported, was so far modified that the prohibition was made to apply only to the goods of Russia and Turkey and to certain articles since well known in commerce by the name of *enumerated* articles, leave being at the same time given to import all other articles in ships of any description. But this modification was of very little importance, inasmuch as the enumerated articles comprised all those that were of most importance in commerce, as timber, grain, tar, hemp and flax, wines, spirits, sugar, &c. In 1660 a supplemental statute (14 Car. 2.) was passed prohibiting all importations from Holland, Germany, and the Netherlands, of a long list of enumerated commodities, under any circumstances or in any vessels, whether British or foreign, under penalty of seizure and confiscation of the ships and goods. Though the extreme rigour of this statute was subsequently modified, its principal provisions remained in full force until the late alterations. Under the 6 Geo. 4. c. 109. (since repealed by 3 & 4 W. 4. c. 50., and consolidated in 3 & 4 W. 4. c. 54., which is also repealed by 8 & 9 Vict. c. 84., and consolidated in 8 & 9 Vict. c. 88.), the intercourse with all European countries in amity with Great Britain is placed on the same footing. The distinction between enumerated and non-enumerated goods is still kept up under the new regulations, but instead of confining the importation of the former into the United Kingdom either to British ships, or ships belonging to the country or place where the goods were produced, or from which they originally were exported, the new re-

gulations permit that they may be imported either in British ships, in ships of the country of which the goods are the produce, or in ships of the country or place from which they are imported into England. By the old law, all articles the produce of Asia, Africa, or America, could only be imported directly in a British ship from the place of their production, but this regulation has been repealed, and it is now lawful for British ships to take on board all articles the importation of which is not prohibited, on meeting with them in any Asiatic, African, or American port.

Besides the restrictive regulations already alluded to, it had been a part of our policy to encourage the employment of our shipping by imposing higher duties on commodities imported into our harbours in foreign vessels, than were imposed on them when imported in British vessels, and it had also been customary to charge foreign vessels with higher port and lighthouse duties, &c. This system was always loudly complained of by foreigners, but we had little difficulty in maintaining it so long as the state of our manufactures enabled us to disregard the retaliatory measures of other powers; but the extraordinary increase that, since the commencement of the late war, took place in our manufactures for foreign consumption, and the necessity under which we were in consequence placed, of conciliating our customers abroad, led to the adoption of the *reciprocity system*. It was first conceded to the United States of America, and afterwards to Prussia, Denmark, Sweden, and other European states. By the 4th section of 6 Geo. 4. c. 1., it is enacted that his Majesty may, by an Order in Council, admit the ships of foreign states into our ports on payment of the like duties that are charged on British vessels, provided that British ships are admitted into the ports of such foreign states on payment of the like duties that are charged on their vessels. *Condensed from Mc Culloch's Commercial Dictionary, title Navigation Laws.*

† 2. One nation does not take notice of the revenue laws of another. 1 *Park on Ins.* 430. 505.

unavoidable accident, invincible necessity, or the like. *The Betty Cathcart, Gillespie*, 1 C. Rob. 220.

9. The system of the Navigation Laws is very rigorous upon the foreign shipper of goods in a British ship, as he is bound to the provisions thereof with all its variations, and to see to the observance thereof under pain of forfeiture. The Court of Admiralty would in cases without fraud, under such circumstances, lean to the foreign shipper, and endeavour to interpret the statute indulgently towards him. A British shipper, whose duty it is to be more especially cognisant of those laws, is not entitled to the same indulgence. *The Pelican, Moodie*, 2 Dodson, 207.

10. The Ship Register Acts, so far as they apply to defeat titles and create forfeitures, are to be construed strictly, as penal, not liberally, as remedial laws. *Hubbard v. Johnstone*, 3 Taunt. 177.

### III. AS TO BRITISH SHIPS.

#### 1. *What ships are to be considered as —*

11. A British vessel was taken by the French and carried into an American port. The British Consul interposed, and the subordinate Court in America restored the vessel as having been captured in violation of their particular neutrality. An appeal was taken to the higher Court; and by agreement, to prevent the ship from rotting in harbour during the pendency of the appeal, she was sold, the proceeds remaining subject to the ultimate event of the suit. In this state of things she was purchased by an American merchant on account of the former owners, if they should elect to take her; if not, on account of other British merchants. The vessel then sailed for Jamaica without her register, which the French Consul refused to give up. *Held*, as to revenue laws, that she had not changed her national character, but remained a British vessel. Affirmed on appeal to the Delegates, 1st July, 1800. *The Betty Cathcart, Gillespie*, 1 C. Rob. 220.

12. By 8 & 9 Vict. c. 88. s. 15. Honduras ships are to be as British in trade with the United Kingdom and American colonies.

*See post*, Nos. 21. 23. 28.

#### 2. *Who may be owners of —*

13. By 8 & 9 Vict. c. 89. s. 12. no person who has taken the oath of allegiance to any foreign state, except under the

terms of some capitulation, unless he shall afterwards become a denizen or naturalised subject of this country by Royal Letters Patent or Act of Parliament, nor any person usually residing in any country not under British dominion, unless he be a member of some British factory, or agent for or partner in a British house, shall be entitled to be the owner of any British registered ship.

14. By a former statute (26 Geo. 3. c. 60. s. 8.) it was enacted that no subject of his Majesty, whose usual residence is in any country not under the dominion of his Majesty, shall be deemed or entitled, during the time he shall continue so to reside, to be the owner, in whole or in part, of any British ship authorized to be registered by that Act, unless &c.: *Held*, under such section, that an occasional residence in British territory, for the purpose of obtaining a colourable qualification, would not confer on a party the rights of a British owner, but that he must have his usual residence there, unless within the exceptions. *The Eleanor, Hall, Edwards*, 135.

15. By 8 & 9 Vict. c. 89. s. 35. property in ships is to be divided into 64 parts or shares; but the right of any owner to any fractional share of a 64th part shall not be affected by reason of the same not having been registered; and partners may hold shares in the name of their co-partnership as joint-owners, and such shares shall be deemed partnership property.

16. Under former statutes it was *held* that property in a ship, although bought with partnership money, if registered in the names of one or more only of the partners, must be considered, both at law and in equity, as being the property only of those who were named in the registry. *Camden v. Anderson*, 5 T. R. 709.; *Curtis v. Perry*, 6 Ves. jun. 739.; *Yallop ex parte*, 15 Ves. jun. 60.; *Houghton ex parte and Gubbe ex parte*, 17 Ves. jun. 251.; *Mestaer v. Gillespie*, 11 Ves. 625. 642.; *Speldt v. Lechmere*, 13 Ves. 588.; *Brewster v. Clarke*, 2 Mer. 75.; *Slater v. Willis*, 1 Beav. 355.; and *see Stringer v. Murray*, 2 B. & A. 248.

17. Part-owners of a ship are tenants in common, not joint-tenants: there is no lien, therefore, on the share of one who is a bankrupt, having also been managing owner, for outfit, freight, &c. due to the others. *Ex parte Young*, 2 V. & B. 242.

18. The possession of one owner is the possession of all. *Ex parte Machell*, 1 Rose, 447., 2 V. & B. 216.

19. But a part-owner of a ship is not necessarily a partner. *Helme v. Smith*, 7 Bing. 702.; S. C. 5 M. & P. 744.

20. By 8 & 9 Vict. c. 89. s. 36. only 32 persons are to be owners of any ship at one time; but provision is therein made with regard to joint-stock companies, and the equitable title of heirs, minors, creditors, and others, is not to be affected thereby.

### 3. Of the registry of—\*

21. By 8 & 9 Vict. c. 89. s. 5. no vessels are to be registered except such as are wholly of the build of the United Kingdom, or of the islands of Man, Jersey, or Guernsey, or of some of the colonies, plantations, islands, or territories in Asia, Africa, or America, or of Malta, Gibraltar, or Heligoland, belonging to this country at the time of the building of such vessels, or such vessels as shall have been condemned in any Court of Admiralty as prize of war, or in any competent Court, as forfeited for breach of the laws for the prevention of the slave trade, and which shall wholly belong to subjects of this country duly entitled to be owners.†

22. By 8 & 9 Vict. c. 88. s. 14. British vessels under fifteen tons burthen, navigating on rivers, &c., as also British vessels under thirty tons engaged in the Newfoundland fishery, &c., need not be registered.

23. By 8 & 9 Vict. c. 89. s. 9. British ships captured are not to be again entitled to registry, but ships condemned in Courts of Admiralty may be registered.

24. By s. 10. ships are to be registered at the port to which they belong, but Commissioners of Customs may permit registry at other ports.

25. By s. 11. every ship shall be deemed to belong to some port near which some or

one of the owners shall reside; and on change of subscribing owners, the ship shall be registered *de novo*. If registry *de novo* cannot be made, the ship may go one voyage with the permission of the Comptroller or Collector of Customs indorsed on the existing certificate; and ships built in foreign possessions for owners resident in the United Kingdom may have a certificate from the collector so to trade for ten years, or until their arrival in the United Kingdom.

26. By s. 33. prize vessels are to be registered only at certain ports.

27. By s. 32. owners of vessels condemned as prize or for breach of the laws against the slave trade shall, for the purpose of registry, produce to the Collector of Customs a certificate of such condemnation under the hand and seal of the Judge of the Court condemning the same (which certificate such judge is thereby authorized to give), and an account of the particulars contained in the certificate therein-before set forth, to be made and subscribed by a person appointed by the Court then and there to survey such ship, and shall also make and subscribe a declaration as to the identity of the vessel.

28. By 49 Geo. 3. c. 41. any British ship re-captured from the enemy by any King's ship-of-war, or by any ship having letters of marque, or by any ship-of-war of any state in alliance with his Majesty, may be registered, and have the privileges of a British-built ship, as if it had not been captured.

### (a) Of the transfer of—

29. By 8 & 9 Vict. c. 89. s. 34., where the property in any British ship, or any part thereof, shall, after registry thereof,

\* 3. The registration of British ships appears to have been first introduced into this country by the Navigation Act, 12 Car. 2. c. 18. Various provisions with regard thereto were afterwards made by the 7 & 8 W. 3. c. 22., and the whole reduced into a system by the 27 Geo. 3. c. 19. These regulations were embodied and amended in the 6 Geo. 4. c. 110., which repealed all the prior statutes thereon, and was itself repealed by the 3 & 4 W. 4. c. 55., which has since also been repealed by 8 & 9 Vict. c. 89., by which last mentioned act the registration of British vessels is now regulated. (This statute is printed in the Appendix.)

4. The 8 & 9 Vict. c. 89. (for the registering of British vessels) regulates in ss. 2. and 3. the persons by whom, and the places where, British ships are to be registered, and the form of the certificate is therein set forth; s. 11. contains provisions as to the time allowed for registering such vessels in

certain cases; ss. 13. to 28. contain regulations as to the declaration to be made by owners previous to registry, also as to the survey of the vessels, the admeasurement of the tonnage, the bond to be given by the master and certain of the owners, the name of the vessel, and the builder's certificate.

5. The registry of Indian ships is now regulated by the 3 & 4 Vict. c. 56., and by the proclamation of the Governor-General in Council made in pursuance of that act. *Abb. Sh.* 70.

† 6. The privileges of a British ship appear to have been first given by the 4 Geo. 4. c. 41. s. 5. to a ship condemned for breach of the laws for the prevention of the slave trade. Under former Registry Acts, it was decided that such a ship would not be considered as prize of war, although the Judge of the Court of Vice-Admiralty in which she was condemned had certified that she was condemned as lawful prize. *Rex v. Collector and Comptroller of the Customs, London*, 1 M. & S. 262.

be sold, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry, or the principal contents thereof, otherwise such transfer shall not be valid either in law or equity; but no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry, instead of the existing certificate, provided the identity of the ship intended in the recital be effectually proved thereby.\*

30. A transfer of a ship is invalid to all intents and purposes if the Registry Acts are not complied with, and there is no relief in equity, as upon a defective conveyance: *Speldt v. Lechmere*, 13 Ves. jun. 589.; or on the ground of accident or fraud. *Thompson v. Leake*, 1 Mad. 39.

31. Where the captain of a vessel wrecked directed an auctioneer by letter, not under seal, to sell her, (a course which was found afterwards to be justified by extreme necessity,) which was done, and the balance paid over and received by the owners without objection; but it appeared that the sale was made by the auctioneer by an instrument under seal, and in his own name, but duly reciting the certificate of registry; held that, as the sale would have been valid if in writing without seal, and purported to convey the interest which, as agent, he was empowered to convey, it operated both as the deed of the agent and as a written transfer from the owner, which the Court would give effect to. The 3 & 4 W. 4. c. 31. does not necessarily require a bill of sale, but a written instrument reciting the certificate of registry is enough; nor need it be signed by the party conveying. *Hunter v. Parker*, 7 M. & W. 322.; and see *Brutton v. Burton*, 1 Chit. Rep. 707.

32. A bill of sale of a ship is not void, although it omits to set forth the true consideration, and is not stamped with an *ad valorem* stamp; but the parties thereto are liable to a penalty. *Robinson v. Macdonnell*, 5 M. & S. 228.

33. In the following cases the purchaser's titles were held, under the old statutes, to be invalid, by reason of non-compliance therewith, in the want of recital of the ship's register. *Hibbert v. Rolleston*, 3 Bro. C. C. 571., 3 T. R. 406.; *Brewster v. Clarke*, 2 Mer. 75.

34. But a mere literal deviation from the

prescribed form will not render it void: *Taylor v. Kinlock*, 1 Stark. N. P. C. 175.; nor a mere clerical error. *Rolleston v. Smith*, 4 T. R. 161.

35. The property of a ship vests in the purchaser upon the execution of the bill of sale. *Hubbard v. Johnstone*, 3 Taunt. 177.; but see *Ritchie v. St. Barbe*, 4 Taunt. 768.

36. But the Ships' Registry Acts do not apply to a transfer by operation of law, such as from the commissioner to the assignees of a bankrupt. *Bloxam v. Hubbard*, 5 East, 407.; S. C. Smith, 487.

37. A bill of sale made to a trustee for the benefit of underwriters, whose names are not stated, is not *prima facie* void because contrary to the Registry Acts. *Heath v. Hubbard*, 4 East, 110.; S. C. 4 Esp. N. P. C. 205.

38. An executory agreement *inter partes* for the sale of the share of a vessel, with a present interest therein, though the purchase-money was to be paid, with interest, at a future time, was void by statute 26 Geo. 3. c. 60. s. 17. and 34 Geo. 3. c. 68. s. 14., unless it contained a recital of the certificate of the ship's registry. *Biddell v. Leeder*, 1 B. & C. 327.; S. C. 2 D. & R. 499.; see *Kain v. Old*, 2 B. & C. 627.; S. C. 4 D. & R. 52.; *Cole v. Parkin*, 12 East, 471.

39. Under the prize statutes it was held that a bill of sale from the original builder to the first purchasers need not contain a recital of the certificate of registry. *Oxenham v. Gibbs*, Abb. Sh. 54.

40. By 8 & 9 Vict. c. 59. s. 37. no bill of sale is valid to pass the property in ships, or any share thereof, or for any other purpose, until it has been produced to the collector and comptroller of the port at which the ship is registered, or about to be registered *de novo*, as the case may be; nor until such collector and comptroller respectively shall have entered in the book of such last registry in the one case, or in the book of such registry *de novo*, after all the requisites of law for such registry *de novo* shall have been duly complied with, in the other case, the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each, if more than one, and the date of the bill of sale and of the production of it.

\* 7. Under the old Ship Registry Acts it was held that their provisions were not confined to the transfer of property to a stranger, but applied also

to a transfer by one part-owner to another. Abb. Sh. 84.; and see *Speldt v. Lechmere*, 13 Ves. jun. 588.

41. *Semble* that a bill of sale purporting to be a second mortgage of a ship was not such a transfer of the same interest in a ship within the thirty-ninth section of the old stat. 6 Geo. 4. c. 110., as required the thirty days mentioned in that clause to elapse before the officer could enter such a second mortgage in the book of registry. *Ex parte Jones*, 2 C. & J. 513.

42. The owner of a ship may, by parol, authorize a creditor to take possession, and hold it for a lien, without any alteration of the register. *Cazenove v. Clayton*, 2 Mood. & Rob. (N. P.) 552.

43. The sale of a ship at sea is valid, notwithstanding the bankruptcy of the vendor before her arrival in port; and, therefore, before the title is completed by the indorsement of the certificate of registry, if the other requisites of the Ship Registry Act have been previously complied with. *Mestaer v. Gillespie*, 11 Ves. 639.

44. Where the owners of a ship belonging to an outpost have regularly conveyed away their interest, and the certificate of registry has been entered with the proper officer of that port, and a copy transmitted to the Custom House in London, an omission of the officer in London to make the entry in the Custom House books there shall not subject them as owners. *Ratchford v. Meadows*, 3 Esp. 69.

45. *Quere*, whether the legal title under an assignment of a share in a ship failing under the Ship Registry Acts, 26 Geo. 3. c. 60., 34 Geo. 3. c. 68., for want of the indorsement upon the certificate within ten days after the return of the ship to port, if that were prevented by fraud, relief could be had in Equity, and in what form, and whether it might not be had as to the freight, if not as to the ship, though both were comprised in the same bill of sale. *Mestaer v. Gillespie*, 11 Ves. 621., *contra Thompson v. Drake*, 1 Mad. 39.

46. By 8 & 9 Vict. c. 89. s. 38., after entry in the book of registry, the bill of sale is to pass the property as against all persons whatsoever, except as against such subsequent purchasers and mortgagees who shall first procure the indorsement on the certificate of registry as therein-after mentioned.

47. *Semble* that in the construction of the 3 & 4 W. 4. c. 55. s. 35. (which is similar to the above section), there is no distinction between mortgages for the security of an antecedent debt and other mortgages. *Douglas v. Russell*, 1 Sim. 524., 1 Mylne & K. 468.

48. In a case of mortgage for securing

an antecedent debt, on the same day that the deed was executed the mortgage was registered; but the ship being then at sea, the particulars of the mortgage were not indorsed on the certificate of registry when the ship returned to England or afterwards; *semble*, that as between the mortgagor and mortgagee the mortgage was good, though it was not indorsed on the certificate of registry. *Lister v. Payne*, 11 Sim. 348.; and see *Abb. Sh.* 78.

49. By 8 & 9 Vict. c. 89. s. 39., when the particulars of any bill of sale or other instrument by which any ship or shares thereof shall be transferred have been entered for any shares, thirty days shall be allowed for indorsing the certificate of registry before any other bill of sale for the same shall be entered, and the several purchasers or mortgagees of any such ship or shares thereof, when more than one appear to claim the same property, or a security thereon, in the same rank and degree, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which property was transferred to them were entered in the book of registry as therein-aforesaid, but according to the time when the indorsement is made upon the certificate of registry as therein-aforesaid, and provision is made in case of the certificate being lost or detained.

#### (b) *De novo*.

50. By 8 & 9 Vict. c. 89. s. 29. if the certificate of registry of any ship shall be lost or mislaid, the Commissioners of Customs may permit a registry *de novo*, or grant a licence on certain conditions, and under certain restrictions therein specified.

51. By s. 30. if the certificate be wilfully detained by any party the ship shall, on certificate thereof of the justice adjudicating on such detention, be registered *de novo*, and if the person detaining the certificate shall have absconded, the ship may be registered, as in the case of a lost certificate.

52. By s. 31. any ship altered so as not to correspond with the particulars in the certificate of registry is to be registered *de novo*.

53. By s. 42., on change of property, registry *de novo* may be granted if desired, although not required by law.

#### 4. *Of the title to —*

*See antè*, Nos. 29. to 49.

5. *Of the requisites to entitle to the privileges of—*

54. By 8 & 9 *Vict. c. 88. s. 13.* no ship shall be admitted to be or to enjoy the privileges of a British ship unless duly registered and navigated as such, *viz.* by a British master and a crew three-fourths of whom are British seamen, unless the ship be engaged in fishing or coasting voyages, when the whole of the crew shall be British. By *s. 21.* such proportion may be altered by proclamation.

55. By 8 & 9 *Vict. c. 86. s. 113.* (Customs Act), all trade by sea from one port of the United Kingdom to another, or to the Isle of Man, is to be deemed coastwise, and no part is to be deemed beyond the seas; and by *s. 114.* the Lords of the Treasury may regulate what shall be deemed trading by sea under this act.

56. By 8 & 9 *Vict. c. 89. s. 2.* no vessel is to enjoy the privileges or advantages of a British registered ship until registered.

6. *Of the rights and privileges of—*

(a) *Generally.\**

57. By 8 & 9 *Vict. c. 88. s. 22.* goods prohibited only by the Navigation Laws thereinbefore contained may be imported for exportation.

58. By 8 & 9 *Vict. c. 89. s. 6.* no Mediterranean pass shall be issued for the use of any ship belonging to Malta or Gibraltar, except to ships registered at those places, or owned, as therein required, by British subjects there resident.†

*See anti, Note 1.*

(b) *Where forfeited—et contra.*

59. By 8 & 9 *Vict. c. 88. s. 24.* if any goods be imported, exported, or carried coastwise, contrary to the Law of Naviga-

tion, all such goods shall be forfeited, and the master shall forfeit 100*l.*

60. By 8 & 9 *Vict. c. 89. s. 4.* any ship exercising the privileges of a British ship before registry shall be subject to forfeiture, with all her guns, tackle, &c.

61. By *s. 7.* foreign repairs are not to exceed 20*s.* per ton, on pain of forfeiture of privileges of registry, unless in case of extraordinary damage during absence, to enable the vessel to perform the voyage in which she shall have been engaged, and to return to some port or place in the dominions of her Majesty; and which repairs the master, on arrival, is to report and prove the necessity for, to the satisfaction of the Commissioners of Customs, who are to certify the same on the certificate of registry. By *s. 8.* ships declared unseaworthy are to be deemed ships lost or broken up.

7. *Of the manning of—*

62. By 8 & 9 *Vict. c. 88. s. 17.* no person shall be qualified to be a British master or seaman, within the meaning of this act, unless he be natural born, or naturalised by act of parliament, or a denizen, or a subject by conquest or cession of some newly-acquired country, and shall have taken the oath of allegiance or fidelity required by the treaty or capitulation on the acquisition of such country, or have served in her Majesty's ships of war in time of war for three years. Natives of India are not to be deemed British seamen, and one British seaman to every twenty tons shall be sufficient to constitute a proper crew; but nothing therein shall affect the acts of 4 *Geo. 4. c. 80.* and 3 & 4 *Vict. c. 56.,* regulating the trade within the limits of the East India Company's charter.

63. By *s. 18.* her Majesty is authorized, by proclamation during war, to declare

\* 8. The 8 & 9 *Vict. c. 86.* (the Customs Act) enumerates the different goods wholly or partially prohibited to be exported from, or imported into, this country under pain of forfeiture, and gives powers to the Crown by proclamation or Order in Council, to regulate certain of such prohibitions and restrictions. The 8 & 9 *Vict. c. 88.* (for the encouragement of British Shipping and Navigation) regulates the commercial privileges of British ships and of foreign ships trading with this country. (This last statute is printed in the Appendix.)

† 9. The nature of this instrument is thus described by Mr. Reeves in his treatise on the *Law of Shipping*: "In the treaties that have been made with the Barbary States, it has been agreed that the subjects of the King of Great Britain should

pass the seas unmolested by the cruisers of those states, and for better ascertaining what ships belong to British subjects, it is provided that they shall produce a pass under the hand and seal of the Lord High Admiral or Lords Commissioners of the Admiralty. In pursuance of these treaties, passes are made out at the Admiralty, containing a very few words written on parchment with ornaments at the top, through which a scolloped indenture is made. The scolloped tops are sent to Barbary, and being put in possession of their cruisers, the commanders are instructed to suffer all persons to pass who have passes that will fit these scolloped tops. From the more particular use of these passes in the Mediterranean, they have obtained the name of Mediterranean passes.

that foreigners having served two years on board her Majesty's ships-of-war during war shall be British seamen within the meaning of this act.

64. By s. 19. British ships are not to be suffered to depart from any British port unless duly navigated.

65. By s. 20. if British ships shall have an excess of foreign seamen on board, the master or owners shall forfeit 10*l.* for each of such seamen, unless British seamen cannot be procured or a proportion be destroyed unavoidably, and a certificate produced, or proof made thereof.

(a) *Breaches of — et contra.*

66. Cargo imported into a British colony in a British vessel, not manned by a crew two-thirds British, as required by the statute, is liable to condemnation, notwithstanding perfect innocence of intention and absence of fraud on the part of the owners of the cargo. *The Beaver, Jones*, 1 Dodson, 158.

67. Foreigners hired to take care of a cargo of mules on board a British ship are not to be deemed part of the crew within the meaning of the Navigation Laws, requiring British ships to be manned by a certain proportion of British seamen. Seamen impressed out of a British ship into the King's service, *held* to be within the exception of the statute. Condemnation of vessel by reason of breach of such Navigation Laws reversed on appeal to the High Court of Admiralty, but seisor's expenses in the appeal allowed. *The George the Third, Scott*, *Ibid.* 311.

68. Negro seamen, and all freemen born and domiciled at Guadaloupe, and, *semble*, every British colony, are British subjects within the meaning of the statute requiring British ships to be navigated by a proportion of British seamen. *The Generous*, 2 Dodson, 327.

69. In the case of a British vessel, the master of which had been discharged in the course of the voyage for gross misconduct, and which, as another English master

could not then be obtained, was navigated by a foreign port, hired for the purpose, to an English port, with a clear intent of instantly disclosing the fact there, the Court would act with great indulgence, and though the statutes have not provided for the case, would consider it, as a case of pure necessity proved as such, to provide for itself. *Ibid.* 335.

70. Goods imported in a British ship not manned and navigated according to law, *Held* not to be liable to forfeiture, the imperfect manning of the ship having been proved to be matter of uncontrollable necessity. Decision affirmed on appeal, but appellants' costs allowed. *The Pelican, Moodie*, *Ibid.* 194.

71. A ship which lost her proportion of British seamen by death at Sierra Leone, and could not, at least upon any reasonable terms, replace them except with foreigners, *Held* within the exemption allowed by the 6 Geo. 4. c. 109. s. 19. *Stuart v. Powell*, 1 B. & Ald. 266.

72. A British ship and cargo condemned for a breach of the Navigation Laws, in not being manned by a proportionate number of British seamen, an adequate necessity not having been shown, and disguise attempted and imposition practised throughout. Decision affirmed on appeal. *The Generous*, 2 Dodson, 335.

73. In the case of a vessel proceeded against for a breach of the Navigation Laws in not being manned with a due proportion of British seamen, the claimants cannot set up as a defence that there was a due proportion of such seamen on board, at the same time that they assert that a sufficient crew of such qualified persons could not be obtained. The latter assertion disproves the former. *Ibid.* 325.

IV. AS TO THE BRITISH POSSESSIONS ABROAD.\*

1. *Generally.*

74. It is an admitted rule of law, that when a foreign colony becomes a British colony, the British laws of revenue im-

\* 10. The first relaxations of the guarded monopoly in our colonial trade were introduced by the 6 Geo. 4. c. 114. Further modifications were also introduced by 1 W. 4. c. 24., and afterwards embodied in 3 & 4 W. 4. c. 59., which is repealed by 8 & 9 Vict. c. 93., under which the trade of our colonies with foreign countries is now regulated.

11. The 3 & 4 Vict. c. 56. regulates the trade of ships built and trading within the limits of the East India Company's charter.

12. On the laws of trade as regards the East Indies and China in particular, see 3 *Stephens' Black. Comm.* 279.

13. The old Navigation Laws were held to extend to the Indian possessions of this country. *The Recovery, Webb*, 6 C. Rob. 346., and *Willson v. Maryat*, there cited. But not to Gibraltar and Malta. *The Nemesis, Quick*, Edwards, 50., and see *Jabcock v. Potts*, 7 East, 449., 2 Park on Ins. 544.; *Rubichon v. Humble*, 1 Dow. 191. The

mediately attach. *The Friendship, Cox*, 1 Dodson, 373.

75. There is nothing in the origin or constitution of a colony that excludes from its shores more than from those of the mother country, till that country has ordained what is to be the condition of the colony. *The Matchless, Vint*, 1 Hagg. 106.

*See ante*, Note 1.

## 2. Breaches of — et contra.\*

76. Sentence of the Vice-Admiralty Court of Halifax condemning a ship and cargo for breach of the Navigation Laws, affirmed on appeal to the High Court of Admiralty, the importation into Halifax being *Held* to have been illegal and fraudulent, the ship not being British-owned, nor having a British register, nor being driven in, as alleged, by distress. *The Eleanor, Hall* (1809), 1 Edwards, 135.

77. A British-built ship transferred to foreign owners, but remaining ostensibly British, condemned for importing goods into a British colony, the ship not being at the time British-owned, as required by the statute. Appeal therefrom rejected, and decision affirmed by the High Court of Admiralty. *The Beaver, Jones* (1812), 1 Dodson, 152.

78. An American vessel which entered the port of Barbadoes, having prohibited goods on board, condemned in the Vice-Admiralty Court of Barbadoes, an asserted intention to carry them to St. Thomas being *Held* not to have been proved, and the case to be one of fraud. Decision affirmed with costs, on appeal to the High Court of Admiralty. *The Vixen, Hutchings* (1812), *Ibid.* 136.

79. Cargo imported into a British colony in a British-built ship, but not British-owned as required by the statute, condemned (as well as the ship) notwithstanding the absence of all fraud and perfect innocence of intention on the part of the owners of the cargo. Such parties cannot avoid the penalties of the statute by the plea of ignorance. *The Beaver, Jones* (1812), *Ibid.* 158.

80. On appeal from the decision of a

Vice-Admiralty Court condemning part of a cargo for having been imported into a British colony by an alien factor contrary to the statute, the sentence appealed from reversed with 40*l. nomine expensarum*, on the ground that the alien was not the factor, and that the importation was by British merchants. *The Matchless, Vint* (1822), 1 Hagg. 102.

81. On appeal from a condemnation of a ship and cargo by the Vice-Admiralty Court of Jamaica, for illegal importation from America into that island, decision affirmed, but without costs, notwithstanding a transshipment at an intermediate port (from whence an original importation would have been legal), such transshipment being *Held* to be colourable only. *The Eliza Ann, Freeman* (1824), *Ibid.* 257.; and see *The Matchless, Vint* (1822), *Ibid.* 108.

82. The importation of East India goods into British colonies is not only forbidden by the Navigation and Colonial Laws, but is in direct opposition to the guarded rights and privileges of the East India Company. The provisions of the statute, by which the strictness of the colonial system has been somewhat relaxed, are limited and special. A discretionary power is vested in the Crown to authorize a relaxation with respect to the importation of particular articles, and this power is to be exercised by an Order in Council transmitted to the Governor of the West India islands for their guidance and direction. The governors themselves, however, are entrusted with no such discretionary power. Unless the goods are enumerated in the Order of Council, the permission of the governor is null and of no effect, and it is as penal to import non-enumerated goods under his authority as without it. *The Vixen, Hutchings* (1812), 1 Dodson, 145.

83. A British ship exporting logwood from Jamaica, though described and used as dunnage, condemned for breach of the revenue laws. Decision affirmed, but without costs, on appeal to the High Court of Admiralty. *The Reward, Selkirk*, 2 Dodson, 265.†

84. An appeal from the decision of a Vice-Admiralty Court, condemning cargo

Navigation Laws, however, now in force, extend thereto.

14. Honduras was held to be a dependency of Jamaica, and not a distinct settlement. *The Swift, Begbie*, 1 Dodson, 338.

\* 15. Cases of seizures under the old Navigation Acts as to the Colonies. *Ibid.* 334.; *The Adams, Tubbs*, Edwards, 289.; *The Sarah, Gill*, 1 Dodson,

77.; *The Mary, Miller*, *Ibid.* 73.; *The Friendship, Cox*, *Ibid.* 373.; *The Matchless, Vint*, 1 Hagg. 108.

† 16. Pieces of wood placed against the sides and bottom of the hold to preserve the cargo from the effects of leakage, according to its nature and quality, are called dunnage. *Abb. Sh.* 346.



imported without payment of duties, and decreeing penalties on the importer, pursuant to the statute 4 Geo. 3. c. 15. affirmed. *King v. Whittaker* (1823), 1 Hagg. 145.

85. A similar appeal affirmed as to one of the parties, but reversed as to the other, on the ground of insufficient proof of his having been the importer. *Ibid.*

*See post*, No. 100.

## V. AS TO FOREIGN SHIPS.

86. By 8 & 9 Vict. c. 88. s. 16. no ship shall be admitted to be a ship of any particular country unless of the build of or prize to such country, or forfeited thereto under any law for the prevention of the Slave Trade, and duly condemned or forfeited therein as such; or British-built (not having been prize from British subjects to any other foreign country), and owned and navigated by a crew, three-fourths of whom and the master shall be subjects of such foreign country; nor unless wholly owned by subjects of such country usually residing therein or under the dominion thereof, and the country of every ship shall be deemed to include all places under the same dominion as the place to which such ship belongs.

87. The legality of the voyage in which British subjects may, as owners, employ a foreign-built ship, will depend upon the particular voyage and the cargo, with reference to the Navigation Act. The importation of goods from America in a vessel American-built, though owned by a British subject, was not legalised by the 49 Geo. 3. c. 59. *Campbell v. Innes*, 4 B. & Ald. 426.

88. Where a statute gives a privilege to ships of a state in amity with his Majesty, and manned with foreigners, to import merchandise which would be otherwise prohibited, it does not extend to foreign-built ships belonging to British subjects. *Attorney-General v. Wilson*, 3 Price, 431.

*See ante*, Note 1.

## VI. OF THE JURISDICTION OF COURTS AS TO — \*

### 1. Generally.

89. By 8 & 9 Vict. c. 88. s. 25. all forfeitures under that act are to be recovered

like forfeitures under an act of the same session for the prevention of smuggling (8 & 9 Vict. c. 87.).

90. By 8 & 9 Vict. c. 89. s. 52. penalties and forfeitures by that act incurred are to be recovered like penalties or forfeitures inflicted under the laws relating to the customs (8 & 9 Vict. c. 87.).

91. By 8 & 9 Vict. c. 87. s. 82. all penalties and forfeitures imposed by that or any other act relating to the customs, trade, or navigation, shall be recovered by action of debt, &c. in any of her Majesty's Courts of Record at Westminster, or at Dublin, or at Edinburgh, &c. or by information before two justices; and by s. 95. all such penalties and forfeitures incurred on the high seas shall be deemed to have been incurred at the place on land into which the person incurring the same shall be brought, or in which he shall be found.

92. An American vessel having been seized for a breach of the Navigation Laws, in trading from the British settlements in India, and proceeded against for such offence in the Prize Court of Admiralty, *Held* that that branch of the Court of Admiralty, as being a Court more immediately of the Law of Nations, had not jurisdiction to entertain such a plea of offence. Restitution to the neutral claimant decreed accordingly. *The Recovery*, *Webb*, 6 C. Rob. 341.

*See ante*, Nos. 1, 2.

### 2. Of Vice-Admiralty Courts.

93. The Vice-Admiralty Courts in the West Indies have no jurisdiction over offences, whether of importation or exportation, committed against revenue laws out of their respective islands. *The Fabius*, *Couper*, 2 C. Rob. 245.

94. On appeal, therefore, from a sentence of condemnation of the Vice-Admiralty Court of New Providence for such a breach of the revenue laws, decision reversed with costs and damages, on the ground of that Court having no jurisdiction. *Ibid.*

95. The jurisdiction of Vice-Admiralty Courts in revenue cases is of mere statutory institution, and by stat. 49 Geo. 3. c. 107. questions of this sort must be tried either where the offence was committed

\* 17. It appears that the High Court of Admiralty has now no jurisdiction, either original or appellate, in cases of breaches of the Navigation Laws, its original jurisdiction having been apparently taken away by the 74th section of the 6 Geo. 4. c. 108. (re-

enacted in succeeding statutes, see No. 91. *supra*), and its appellate jurisdiction by the 3 & 4 W. 4. c. 41., transferring appeals from Vice-Admiralty Courts thereon, from the High Court of Admiralty to the Privy Council.

or the seizure made. The decision of a Vice-Admiralty Court in such a case pronounced on appeal to the High Court of Admiralty to be a nullity, without reference to the general merits, on the ground of the Vice-Admiralty Court having no title to take cognisance of the case, neither the offence nor seizure having been committed or taken place within its jurisdiction. *The Hercules, Chitty*, 2 Dodson, 353.

96. By s. 73. of the 8 & 9 Vict. c. 93. (consolidating the prior acts for the regulation of the trade of the British possessions abroad), penalties and forfeitures under that or any other act relating to the customs, trade, or navigation, may be prosecuted and recovered in any Court of Record or Vice-Admiralty having jurisdiction in the colony where the cause of prosecution arises, or in the adjoining colony; and s. 84. regulates the distribution of such penalties and forfeitures.

#### VII. WHO AND WHAT WITHIN THE OPERATION OF—ET CONTRA.

##### 1. *The Crown and Crown property.*

97. If the sovereign of this country traded as some sovereigns do, he would be within the operation of the Navigation Laws. *The Swift, Begbie*, 1 Dodson, 339.

98. An importation of commodities bought with the Crown's money and for the consumption of the Royal Family, *Held* not to be a trading within the meaning of the Navigation Laws. *Ibid.* 340.

##### 2. *Prize property.*

99. A slave ship and cargo were seized by the garrison of Goree, who took the usual examinations, and forwarded them, with the ship's papers, to the High Court of Admiralty for adjudication, in which Court the ship and cargo were condemned. They were in the meantime sold to a British merchant, who sent them to the Isle of Barbadoes for sale, where they were seized, proceeded against, and condemned as for an illegal importation contrary to the provisions of the 26 Geo. 3. c. 60. and 29 Geo. 3. c. 80. On appeal from that sentence to the High Court of Admiralty, this decision was reversed, on the ground that the ship and cargo were to be considered as prize goods within the protection of the law, and exempt from the provisions of those statutes. *La Dame Cecile, Barrett*, 6 C. Rob. 257.

100. Slaves sent as proceeds of prize property (the original prize cargo having been converted into slaves by barter) to Barbadoes, for condemnation in the Prize Court there, condemned in the Revenue Court of Vice-Admiralty for illegal importation under the Acts 12 Car. 2., 7 & 8 W. 3., and 26 & 39 Geo. 3. Decision affirmed, on appeal to the High Court of Admiralty. *L'Eole, Rosseau*, *Ibid.* 220.

##### 3. *Other property.*

101. Private stores, embarked in public transports, are liable to confiscation. *The Swift, Begbie*, 1 Dodson, 344.

#### VIII. WHAT WILL AMOUNT TO A BREACH OF—ET CONTRA.

##### 1. *What will constitute an exportation—et contra.*

102. A vessel which sailed from the London Docks to Gravesend, and there anchored, waiting for certain clearance papers, *Held* not to have left the port of London, so as to have completed the exportation required, within the time specified by her licence. *The Adelaide, Perenchief*, 2 Hagg. 233.

103. A vessel seized as a forfeiture by reason of illegal exportation of slaves, such seizure having been made near the dock-yard at Ireland Island, and near the port of Hamilton, Bermuda, from which port she had cleared for Trinidad, and was weighing anchor, *Held* to have been beyond the limits of the port of Hamilton at the time of seizure, and objection that there had been no exportation overruled accordingly. *Ibid.*

104. A clearing at the Custom House is not an exportation. *Williams v. Manhill*, 1 Moore, 168.; S. C. 7 Taunt. 468.

##### 2. *What will constitute an importation—et contra.*

105. It is not necessary, to constitute an importation, that vessels should come to a wharf at the port. The coming into the anchorage stream of the port would be sufficient. *The Eleanor, Hall*, Edwards, 160.

106. The mere act of coming into port, though without breaking bulk, is *prima facie* evidence of an importation, though this presumption may be rebutted by the claimants for the ship, upon whom, however, the *onus* rests. *Ibid.*

107. The bringing goods in a ship into

port is *prima facie* evidence of importation, which, however, may be repelled; but the act of putting them into a boat from the ship, with the avowed intention of landing them, is conclusive evidence of importation, without proof of final landing and warehousing of the goods. *The Adams, Tubbs, Edwards*, 298.

108. To constitute an importation within the meaning of the stat. 15 Car. 2. c. 7. it is not necessary that the goods should have been actually landed: it is sufficient if they were brought into the harbour with an intention of importing them. *The Mary, Miller*, 1 Dodson, 72.; *The Sarah, Gill*, *Ibid.* 78.

109. Entering a Spanish settlement with an intention of importing a cargo of British plantation produce, *Held* to be a violation of the statute 22 & 23 Car. 2. c. 26., though the "laying the goods on shore" was not effected, owing to the seizure. Affirmed on appeal. *The Friendship, Cox*, *Ibid.* 373.

110. The coming into a port with prohibited articles of cargo, under circumstances tending to negative an intention of landing them, *Held*, notwithstanding, to amount to an importation of such articles, and to subject the parties to the penalties attaching thereon. *The Paisley, Jackways*, Edwards, App. E.

111. The presumption of law is, that a vessel entering a prohibited port, without a necessity for her doing so being fairly shown, does so for the purpose of importation. That presumption must be fully rebutted to bar condemnation. *The Friendship, Cox*, 1 Dodson, 378.

112. Bringing prohibited goods into harbour, with an intention of importing them, renders them liable to condemnation. A change of such intention (supposing the sincerity thereof to be clearly established), and the application for and procurement of a clearance of them for an exportation, will not relieve from the penalties of law. *The Vizen, Hutchings*, *Ibid.* 151.; *The Swift, Begbie*, *Ibid.* 323. n.

113. When a vessel enters a colonial port with goods, part of which are permitted and part prohibited, and without any mention in her clearance of an ulterior destination, the presumption of law is that all the goods were intended for importation at that port. *The Tortola, McKie*, *Ibid.* 124.

114. On appeal from the Vice-Admiralty Court of St. Croix condemning an American ship and cargo, which entered the port of St. Croix laden with articles part of

which were prohibited and part permitted, without any mention in her clearance of any ulterior destination, decision affirmed. *Ibid.* 120.

115. The importation of goods into a port, from whence they were immediately afterwards exported by the same vessel, is still an importation into such port. *The Wasser Hundt, Lorentzen*, *Ibid.* 271. n.

116. It is a question for the jury to say whether articles brought as dunnage are fairly brought over as such. *The Attorney-General v. Wilson*, 3 Price, 431.

#### IX. OF THE PENALTIES OF —

##### 1. *What circumstances will exempt from — et contra.*

117. Ignorance, error, or a *bond fide* intention will not relieve from the penalties of an illegal importation: the intention of violating the law is a legal and implied ingredient in the act done, and the Court is not required to look further than to the act itself. *The Adams, Tubbs, Edwards*, 298.

118. A breach of the Navigation Laws, though in ignorance and without fraud or concealment, will not exempt parties from the consequences of such violation. *The Mary, Miller*, 1 Dodson, 72.

119. If the law be contravened, proof of fraudulent intention is not necessary. *The Reward, Selkrig*, 2 Dodson, 271.

120. Slight irregularities, breaches of the Navigation Laws, will be overlooked by the Court on the ancient maxim *de minimis non curat lex*. *Quære*, Would three tons be considered as coming under such principle? *Ibid.* 270.

121. The system of the Revenue Laws is of a very unbending nature, and the clearest proof of necessity is requisite to excuse a violation of them. *The Generous*, *Ibid.* 323.

122. A British vessel sailing without a British register, from circumstances of necessity, decreed not to be forfeited under the Navigation Acts. Decision affirmed on appeal to the Judges Delegate, 1st July, 1800. *The Betty Cathcart, Gillespie*, 1 C. Rob. 220.

123. Plea of stress of weather, to be admissible, must show a grave necessity not occasioned by the party himself in the first instance. The mere avoidance of bad weather or foul winds is not sufficient; the danger must be such as to cause apprehension in the mind of an honest and firm man.

It is not requisite that there should be an actual physical necessity existing at the moment; but there must be at least a moral necessity. The distress must be proved by the claimant in a clear and satisfactory manner, and is liable to be rigidly examined. *The Eleanor, Hall, Edwards, 161.*

124. Want of water, if proved to exist without any fault of the party, and to have been discovered and acted upon with proper precaution, would be a sufficient necessity to exempt a vessel from the effect of a breach of the Navigation Laws in consequence thereof. *The Union, Putnam, 1 Hagg. 37.*

125. A foreign vessel condemned in the Vice-Admiralty Court for a breach of the Navigation Laws, the excuse set up, of being driven into the colonial port in question by want of water, being held not to be sufficiently proved, and the transaction to be tainted with fraud. Decision affirmed, with costs, on appeal to the High Court of Admiralty. *Ibid. 32.*

126. When the sickness of the master or crew is set up as an excuse for deviation, it is incumbent on the plaintiff to show that proper medicines and necessaries for the voyage were on board, in a case where the nature of the voyage requires that there should be a surgeon on board. *Wolf v. Claggett, 3 Esp. 257. (Eldon.)*

*See ante, Nos. 3, 4. n.*

## 2. Forfeitures, how affecting —

127. *Quære*, Whether if an existing statute imposed a penalty upon an act which before subjected to forfeiture only, the recorded conviction of the act of forfeiture might not be invoked for the purpose of enforcing the penalty, if it pointed to the offender *nominatim*, though not in terms connecting it with the statute of forfeiture, but only described the same fact identically? *King v. Whittaker, 1 Hagg. 153.*

128. Confiscation of goods for an illegal importation is not necessarily followed by the infliction of penalty on the party committing the offence, because to inflict the penalty the offence must be traced to the individual; and proof of an unlawful act having been done does not necessarily prove who did it, though it may indicate the delinquent, and thereby constitute sufficient evidence to found an infliction of the penalty. *Ibid. 151.*

129. When the same penalty is applicable, it is an immaterial distinction whether the goods imported illegally were partially or wholly prohibited. *Ibid. 152.*

## 3. How affecting the ship and remainder of cargo.

130. A ship importing an illegal cargo must share the fate of the cargo. *The Swift, Begbie, 1 Dodson, 945.*

131. An appeal from the sentence of the Vice-Admiralty Court at Jamaica, and of the High Court of Admiralty, condemning a ship and cargo for illegal importation into the port of Jamaica of certain prohibited articles of cargo in breach of the Revenue Laws, affirmed as to the ship and prohibited articles, but reversed as to the rest of the cargo. *The Paisley, Jackways, Edwards, Appendix E.*

132. The great bulk of the cargo will determine the fate of the other articles. Where only a few trifling prohibited articles are imported, the Court will exercise a sort of judicial connivance thereat. *Aliter*, where the illegal shipment is large. *The Julia, Ropes, 1 Dodson, 170. n.*

## X. OF THE ONUS PROBANDI IN CAUSES OF—

133. In proceedings for breaches of the Navigation Laws, the *onus probandi* lies on the claimant, not on the seizer. *The Beaver, Jones, 1 Dodson, 153.*

134. Nothing more can be required of a public prosecutor or seizer than that he should make out a *prima facie* case, and then the burthen of proof is thrown on the other party. *Ibid.*

135. A ship which had not taken the ordinary route having been seized for a breach of the Navigation Laws, the Court required some explanation as to the reason of taking such route, holding the *onus probandi* to lie on the claimants, and directing their counsel to begin. *The Union, Putman, 1 Hagg. 33.*

136. On all matters of fact in issue in revenue cases, the *onus probandi* is thrown by the statute on the claimant. He must prove the facts necessary for his defence, and it then lies on the seizer to show that those facts do not prove an innocent transaction by reason of prohibition by the statute. *The Matchless, Vint, Ibid. 105.*

## XI. OF THE PRIORITY OF FORFEITURES.

137. A ship was seized in port for the

King, as for a forfeiture by reason of importation of prohibited goods; she was also seized in port by the officers of the Admiralty as a droit and prize of war: *Held*, that the importation was a forfeiture to the Crown antecedent to the seizure for the Lord High Admiral. *The 9th of June, 1709, cited in The Dickenson, Merton, Hay & Marriott, 18.*

138. A judicial sale of a vessel, found at sea and brought into port as derelict, under an order of the Instance Court of Admiralty, at the suit of salvors and claimant without fraud, is available against the Crown's right of seizure for a previous forfeiture incurred by the ship having been guilty of a forfeitable offence against the Revenue Laws, although the Crown was not a party to the proceedings in the Admiralty Court, other than by the King's Procurator General claiming the vessel as an Admiralty droit; and although no decision of droit, or no droit was awarded, and the sale took place *pendente lite*, under an interlocutory order. *Attorney-General v. Norstedt, 3 Price, 97.*

## XII. OF SEIZURES FOR BREACHES OF —

139. A vessel having been seized at Barbadoes by the captain of a King's ship, who shortly afterwards returned the ship's papers, with an intimation to the master that it might not be amiss for him to accompany with his vessel the King's ship to Antigua, and the vessels having set out in company, and bodily possession being taken by the seizer on the following day, *Held*, that the seizure made at Barbadoes was continued throughout, and that the assumption of possession was not a fresh seizure, the vessel never having been set at liberty. *The Hercules, Chitty, 2 Dodson, 363.*

140. The decision of the Vice-Admiralty Court at Jamaica, pronouncing for the forfeiture of a ship and cargo for a breach of the Navigation Laws, having been confirmed on appeal to the High Court of Admiralty, that Court refused to disturb the distribution thereof as settled by the Court below, though not conformably to the statute, the appellants being owners of the ship and cargo, and no party interested objecting to such distribution. *The Mary, Miller, 1 Dodson, 76.*

*As to the per-centage to Greenwich Hospital on colonial, revenue, and navigation seizures by her Majesty's ships, and the unclaimed and forfeited shares thereof — see GREENWICH HOSPITAL.*

## XIII. MISCELLANEA.

141. By 8 & 9 Vict. c. 89. s. 43. collectors of Customs and their subordinates are to permit inspection of declarations, books of registry, &c., in their custody, and to suffer copies to be taken thereof; and the same, on being proved to be true copies, are to be received as evidence without the production of the originals or the attendance of the comptroller or officer of Customs to verify the same.

142. A seizure of a ship forfeited under the Navigation Laws divests the property. *Wilkins v. Despard (1792), 5 T. R. 112.*

143. The Court of Exchequer will not order a vessel seized for breaches of the Navigation Laws to be restored, where there is any question of identity raised at the trial, even although the defendant offer approved security for redelivering her in case a verdict should be recovered against him. *Attorney-General v. Larragoity, 2 Price, 172.*

## NAVY BOARD.

1. On the capture of ships laden with a cargo of mixed goods, some of which are fit for the Government service, the Navy Board has the right of pre-emption of such goods, and in order to reconcile neutrals to the exercise of this right, and to prevent the inconvenience arising from a separation of the cargo, it is thought advisable

to purchase the other part of the goods on board. When the Navy Board avails itself of this right, it exonerates the captor from costs and damages, and pays his expenses; but in case of condemnation of part of the cargo, the Board, on making payment to the captors of the value of the condemned property, deducts from it such

losses and expenses as have arisen from other parts of the same ship. Such mode of settling accounts by the Navy Board, though apparently liable to objection, is not deficient in equity, and may be justified and made valid by the mutual understanding of the parties collected from their acts and the nature of the transaction. The captor thus bearing the loss would be entitled to any profits that might arise from the sale of the goods in such a transaction. *The Jonge Jan, Schnil*, 1 Dodson, 458.

2. Captors can enforce the production of accounts from the Commissioners of the Navy. *Ibid.*

3. Captors are barred by lapse of time (seven years) from calling for the inves-

tigation of accounts between themselves and the Commissioners of the Navy, unless it can be shown that they had it not in their power to obtain a revision at an earlier period. *Ibid.* 453.

4. When restitution of prize property is decreed, if the cargo be deficient, measured by the invoice, from the embezzlement of the captors, they must make it good. If it be not in their hands at the time compensation is sought, but in the hands of Commissioners of the Government, the claimant may seek restitution directly of the Commissioners, and they must look to the captors. *The Concordia, Bayzard*, 2 C. Rob. 102.

## NEUTRALS.

### I. OF THE RIGHTS OF —

1. *Generally.*
2. *As to the measure of restitution of their property.*

### II. OF THE DUTIES OF —

### III. WHAT STATES ENTITLED TO THE PRIVILEGE OF — ET CONTRA.

### IV. OF THE RIGHTS OF NEUTRAL TERRITORY, AND THE VIOLATION THEREOF.

1. *Generally.*

### 2. *Of the limits of —*

### 3. *Who may assert —*

### V. OFFICIAL DECLARATIONS OF NEUTRAL STATES.

### VI. MISCELLANEA.

See ALIENS, BLOCKADE, CARTEL, CLAIMANTS, CONTRABAND, FOREIGNERS, LICENCES, MASTERS, NATIONAL CHARACTER, PRIZE, RECAPTURE, RESTITUTION, SALVAGE (military), TITLE, TRADE WITH THE ENEMY, VISITATION AND SEARCH.

### I. OF THE RIGHTS OF —

#### 1. *Generally.\**

1. A belligerent nation in the exercise of the rights of war is bound to find tribunals for the regulation of them. The neutral has a right to speedy and unobstructed justice, and is not to be prejudiced by difficulties created by questions of domestic constitution of the belligerent state. *The Madonna del Burso, Antonopoli*, 4 C. Rob. 177.

2. A neutral is at liberty to put his goods on board a merchant vessel, though belonging to a belligerent, subject nevertheless to the rights of the enemy, who

may capture the vessel, but who has no right, according to the modern practice of civilised states, to condemn the neutral property notwithstanding a rescue be attempted by the crew of the capturing vessel, but *aliter*, if he put his goods on board a belligerent armed ship. *The Fanny, Lawton*, 1 Dodson, 448.

3. A neutral vessel may legally be employed in carrying enemy's property from the states of the neutral to the enemy's country, the voyage and commerce not being of a hostile description nor otherwise expressly or impliedly forbidden by the law of this country, though the neutral thereby subjects his ship to be detained and carried into a British port for the pur-

\* 1. With reference to the question that free ships make free goods, see in support thereof, *Hubner de la Saisie des Batimens Neutres*, anno 1757, *Marten's Précis du Droit des Gens*, liv. 8.

c. 7., and in opposition thereto, *Lampredi, Del Commercio de Popoli Neutrali*, § 10., *Lord Liverpool's Discourse on the Conduct of Great Britain with respect to Neutrals*, anno 1757.

pose of search. *Barker v. Blakes*, (H. T. 1808), 9 East, 283., 2 Park on Ins. 761.

4. The Court of Admiralty is in the habit of showing a peculiar indulgence to subjects of the Ottoman Empire, the Barbary States, &c., they being strangers to the Law of Nations so long observed and acted upon by European States. *The Madonna del Burso*, *Antonopoli*, 4 C. Rob. 172.

*See CLAIMANTS, cap. II.*

5. This country has no right to interrupt communications between a neutral Government and its ministers at a blockaded port, and the Court would be extremely tender of interposing any difficulties in the way of such a correspondence. *The Drummond*, *Langdon*, 1 Dodson, 104.

6. A neutral merchant vessel sailing in ballast to a port of the enemy declared to be in a state of blockade, with seventeen passengers, some neutrals and some enemies, the master asserting that he carried despatches for the Government of his country, condemned. *Held* that a merchant vessel cannot set up such employment as a ground of protection for a voyage otherwise illegal, but that the neutral state only can do so. *Quære*, has a neutral state the right of imparting such a protection to a merchant vessel engaged in a transaction otherwise illegal? *Ibid.* 103.

2. *With reference to the measure of restitution of their property.*

7. A neutral cargo was directed by the Vice-Admiralty Court at Bermuda, on suspicion of being Dutch property, to be put into the hands of certain Commissioners of Dutch property, appointed by 35 Geo. 3. c. 80. and sent to England, where it was, however, afterwards restored to the neutral owner. On objection on his behalf to certain charges in the registrar's report for insurance and other expenses of transmitting the cargo to England, and to allowance of freight thereon, and application for compensation for deficiency in the cargo occurring since the capture, *Held* that the appointment of Commissioners and the transmission of the property to England to be dealt with by them, being domestic regulations for the particular benefit and convenience of this country, the expenses of such transmission and in relation thereto

should fall on the party for whose convenience such proceedings were taken and not on the claimant, and that the Commissioners and not the captor were bound to make good any deficiency in the cargo; but that if the cargo sold here more advantageously than it would have done in its intended market, the claimant, as reaping the benefit of such improved sale, should bear an adequate proportion of the expenses of bringing it to so beneficial a market. Report directed to be amended accordingly. *The Narcissus*, *Moulton*, 4 C. Rob. 17. 20.

8. If a neutral cargo be seized by a belligerent during war and restitution be decreed, the belligerent is not bound in all cases to pay an insurance which the shipper had not made, although it may be customary among merchants to allow such insurance. Objection to registrar's report for disallowing such insurance overruled and report affirmed. *The Haabet*, *Vette*, 2 C. Rob. 174.

9. A ship was restored as neutral property with freight and expenses decreed to be a charge on the cargo, and the cargo was condemned for want of further proof. The freight was paid out of the proceeds of the cargo, but the remaining proceeds were insufficient to defray the captors' expenses and those of the neutral master also. *Held* that the captor was entitled, with respect to his expenses, to a priority over the neutral master. *The Bremen Flugge*, *Meyer*, 4 C. Rob. 90.

*See CLAIMANTS, COSTS AND DAMAGES, RESTITUTION.*

II. OF THE DUTIES OF—

10. Neutrals are not to relieve the distresses of one belligerent at the expense of the other; any advantage they may derive from such an act will not make it lawful. *The Rendsborg*, *Nyberg*, 4 C. Rob. 126.

11. The extent to which a ship is required to be documented must be considered with reference to the Law of Nations, and to those treaties which are binding on the neutral country; it does not oblige the neutral owner to comply with the peculiar laws and regulations of belligerent powers. *Pollard v. Bell* (1800), 8 T. R. 434.\*

\* 2. The papers required by the Law of Nations to be on board neutral ships to vindicate their title to that character, are — 1st, the passport, sea brief,

or sea letter; 2d, the proofs of property, bill of sale, &c.; 3d, the muster-roll; 4th, the charter-party; 5th, the bills of lading; 6th, the invoices;

### III. WHAT STATES ENTITLED TO THE PRIVILEGES OF — ET CONTRA.

12. A state which shows more favour to one side than to the other, excludes the ships of one belligerent power and receives those of another, is not entitled to the character or privileges of a neutral, the essence of neutrality being a perfect indifference between the contending parties. *The Eliza Ann and others*, 1 Dodson, 245.

### IV. OF THE RIGHTS OF NEUTRAL TERRITORY, AND THE VIOLATION THEREOF.

#### 1. Generally.\*

13. By the Law of Nations not only no direct and immediate act of hostility, but no commencement of such an act, is allowable within the limits of neutral territory. *The Twee Gebroeders, Alberts*, 3 C. Rob. 165.

14. A neutral country has a right to see that no act of violence is committed within its jurisdiction. When such a violation takes place, it has a right to demand reparation for the injury sustained. *The Eliza Ann and others*, 1 Dodson, 245.

15. Acts of violence by one enemy against another are forbidden within the limits of a neutral territory, unless sanctioned by the authority of the neutral state, which it has the power of granting to either of the belligerents, subject to a responsibility to the other. A neutral may grant such a permission beforehand, or acquiesce in such acts after they have taken place, or step forward and claim the property seized by such acts of violence; to give effect to such a claim a clear and indisputable neutrality must be shown. *Id.*

16. The right of seizing the property of the enemy is a right which extends, generally speaking, universally wherever that property is found. The protection of neutral territory is an exception to the general rule; and though the sanctity of a claim of territory is very high, it is to be taken as a matter *stricti juris*, and to be made out by clear and unimpeached evidence. *The Vrouw Anna Catharina, Mahts*, 5 C. Rob. 15. 161.

17. If the capture were really made within neutral territory, it is a nullity, and the property must be restored notwith-

standing that it may actually belong to the enemy; and if the captor should appear to have acted wilfully, and not merely through ignorance, he will be subject to farther punishment. *Ibid.*

18. Claim of neutral territory set up by the Prussian Consul on behalf of his sovereign to protect certain vessels captured in the Groningen Watt in the Zuyder Zee, in breach of the blockade of Amsterdam, pronounced against, the acts of capture being *held*, on facts, not to have been exercised on neutral territory. *The Twee Gebroeders, Northolt*, 3 C. Rob. 336.

19. Claim of an asserted neutral government for enemy's ships captured by a belligerent power within the jurisdiction of the former, pronounced against, on the ground that the claiming state was not neutral at the time, nor the place of capture within its jurisdiction. *The Eliza Ann and others*, 1 Dodson, 250.

#### 2. Of the limits of —

20. Territorial claims of neutral countries to protect from capture are against the general inclination of the law. In the sea out of the reach of cannon-shot, universal use is presumed. In rivers flowing through continuous states a common use is presumed, yet in both of these there may exist a peculiar property excluding the universal or common use; but the general presumption is against such exclusive rights. *The Twee Gebroeders, Northolt*, 3 C. Rob. 339.

21. Where a free passage is generally enjoyed, notwithstanding a claim of territory may exist for certain purposes, no violation of territory is committed if a party, after an inoffensive passage, conducted in the usual manner, begin an act of hostility on open ground. In order to have an invalidating effect it must at least be either an unpermitted passage over territory where permission is regularly requested, or a passage under a permission obtained on false representation. If nothing of this sort can be objected, a capture otherwise legal is in no degree affected by a passage over territory in itself otherwise legal and permitted. *Ibid.* 354.

22. Streams beyond all capes and head-

7th, the log-book; and 8th, the bill of health. See 1 *Marsh. on Ins.*, cap. 9. § 6., where each of these documents is explained, and the particulars thereof fully set forth, and *Abb. Sh.* 347. n.

\* 3. If, when both vessels are in neutral waters,

the captured ship first commence hostilities upon the captor, she forfeits the neutral protection, and the capture is valid. *The Anna*, 3 *Wheaton's (AMERICAN) Rep.* 435.



lands are not at all times of the flow of the tide to be deemed mere rivers. Such sea passages must be held to be *divisi imperii* between the ocean and the mainland, and when the sea flows for navigation they would seem rather to belong to the former than the latter. *Ibid.* 342.

23. The rule of law as to the limits of neutral territory is "*terre dominium finitur ubi finitur armorum vis*;" and since the introduction of fire-arms that distance has usually been recognised to be about three miles from the shore. *The Anna, La Porte*, 5 C. Rob. 386.

24. An English privateer captured a vessel at the mouth of the Mississippi, and within three miles of a number of small mud islands, composed of earth and trees, the deposit of the river, which formed a kind of portico to the mainland. Their elements being derived from the mainland, on the principle of alluvium and increment, they would be the property of the continent from which these elements had been carried. They were physically capable of being embanked, fortified, and occupied by foreign powers, if not considered part of the territory of the United States. *Held*, therefore, that the right of territory was to be reckoned from these islands, and consequently that the capture was a violation of the territory of the United States, and restitution accordingly, with costs and damages. *Ibid.* 373.\*

25. The Court would be inclined to accede to the doctrine stated by Bynkershoek to this extent, that if a cruiser which had before acted in a manner entirely unexceptionable and free from all violation of territory, had summoned a vessel to submit to examination and search, and that vessel had fled to such places as these islands, entirely uninhabited, and the cruiser had, without injury or annoyance to any person whatever, quietly taken possession of his prey, it would be stretching the point too severely against the captor to say that on this account only it should be held an illegal capture. *Ibid.*, and *The John Patrick*, note thereto, *Ibid.* 381.

26. But captors have no right to station themselves in the mouth of a neutral river for the purpose of exercising the rights of war from that river, much less in the river itself. *The Anna, La Porte*, 5 C. Rob. 373.

27. By the Law of Nations the jurisdiction of a neutral territory extends to one mile from the mainland. But if a belligerent power reside in the immediate vicinity of the neutral territory, it is not to be prevented from exercising the rights of war within the limits of that space by reason of any inconvenience thereby occasioned to the neutral. *The Eliza Ann and others*, 1 Dodson, 244. 251.

28. As between nation and nation the territorial right may, by a sort of tacit understanding, be extended to three miles beyond low-water mark, on the principle that their subjects shall not be disturbed in their fishing, coasting-trade, or communications from place to place during war. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 289.

29. Prizes captured by boats bent from a British frigate which was lying at the time within three miles' distance of neutral territory, decreed to be restored on the claim of the Consul of the neutral country, though the capture was effected by the boats without the limits of the neutral territory. Costs and damages against the captors refused. *The Twee Gebroeders, Alberts*, 3 C. Rob. 162.

30. If, while a vessel-of-war is lying in a neutral port, she see an enemy approaching, she may go out and capture without any violation of the immunity of the neutral port, provided it be done beyond the limits of the port. *The Vrouw Anna Catharina, Mahts*, 5 C. Rob. 15.

### 3. Who may assert —

31. A suggestion of neutral territory cannot be set up by an individual claimant. It must proceed from the government whose territory is asserted to have been violated. *The Twee Gebroeders, Alberts*, 3 C. Rob. 162.

32. The privilege of neutral territory asserted against a capture will not itself enure to the protection of the property unless the state from which that protection is due steps forward to assert the right; and therefore, where a sentence by a French Prize Court, which condemned an English vessel, was objected to because it disclosed on the face of it that the capture was made within a mile of Spanish terri-

\* 4. The territorial jurisdiction of the United States extends to a marine league from the shore, which league is to be measured from the shore,

and not from the coast, which includes the shoals thereon. *Soult v. L'Africaine*, Bee's (AMERICAN) Rep. 204.

tory, but that objection had never been interposed by the Spanish Government, *Held* that it was not competent to the former British owner to avail himself of that plea. *La Purissima Concepcion, Ancres*, 6 C. Rob. 45.

33. It is an established rule of law that a claim by reason of neutrality of territory can be made by the neutral government only. *The Diligencia, Moller*, 1 Dodson, 413.

#### V. OFFICIAL DECLARATIONS OF NEUTRAL STATES.

34. Great respect is due to the declaration of the government of a state, though not to the extent that the convoy of a vessel of the state, or public certificates that the goods on board the convoyed ships are the property of its subjects, should be at once received as authority to establish that fact and supersede all further enquiry; because governments may be imposed upon with regard to facts of that nature, which they can take only on the representations of individuals. Where, however, there is an averment of the state as to the nature and purpose of a particular consignment, of which it could have a thorough knowledge, it would be a breach of that comity and respect due to the declarations

of an independent state to doubt the truth of such an assertion. *The Huntress, Stinson*, 6 C. Rob. 111.

#### VI. MISCELLANEA.\*

35. The disposition of individuals is to be considered as bound up in the acts of their government. *The Herstdeler, De Koe*, 1 C. Rob. 118.

36. A cruiser has no right to compel a neutral master to make a promise to go into a port of the cruiser's country for adjudication; but if he choose to enter into such an engagement the neutral nation sustains no injury from it, and it is fully competent to the cruiser to act under it. *The Resolution, Shapleigh*, 6 C. Rob. 21.

37. Articles for the private use of a neutral sovereign, though forming part of a cargo liable to condemnation, are to be restored, conformably to that comity which is observed in such cases by Courts of Prize. *The Speculation, Kohl, Edwards*, 184.

38. *Quære*, whether a foreign ship-of-war lying in a port of Great Britain is liable to the civil process of the Court of Admiralty in a cause of salvage at the suit of British subjects. *The Prins Frederick*, 2 Dodson, 451.†

#### ORDERS IN COUNCIL.‡

1. Orders in Council must be enforced by the Court against all breaches whatever of a commercial nature, without regard to the extent of the transaction (unless extremely trivial), whether comprising the whole or part of a cargo. *The Rose in Bloom, Olcott*, 1 Dodson, 57.

2. The King having, by Orders in Council, declared certain ports in St. Domingo not hostile, which had formerly been but were no longer under the dominion of France, though such declarations were made for collateral and limited purposes not covering in their terms the trading in

question, a trading to such ports from parts of the King's dominions not named in such prior limited orders, *Held* to be legalised, the same as to neutral ports in general, by such authoritative recognition of those ports in St. Domingo not being hostile; and the inference as to the legality of such neutral trade not to be rebutted by a subsequent Order in Council opening the trade generally, so as to cover in its terms the particular adventure to all ports of St. Domingo not in the possession of France. *Blackburne v. Thompson*, (1812), 15 East, 81.

\* 5. The acts of subjects done under the orders of their sovereign are not cognisable by foreign Courts. If such acts be a violation of neutral rights, the only remedy is an appeal to the sovereign or a resort to arms. *Maisonnaire v. Keating*, 2 Gallison's (AMERICAN) Rep. 334.

† 6. A public armed vessel of a foreign friendly sovereign entering a port open for her reception, on the terms on which ships-of-war are generally permitted to enter the ports of a friendly power, is

not subject to the jurisdiction of the nation in whose port she lies; and title to such a vessel cannot be asserted by libelling her in the Courts of Admiralty. *The Schooner Exchange v. M'Faddon*, 2 Cranch's (AMERICAN) Rep. 115.

‡ 1. The decrees of the French government, commonly called the Berlin and Milan Decrees, and the British Orders in Council, issued in retaliation, are printed in the appendix to *Edwards' Rep. Appendices D, and notes therein, H, K, L.*

## OWNERS.

## I. OF OWNERS GENERALLY, 268.

1. *Of assignees of* — see ASSIGNEES.
2. *Who may be* — see NAVIGATION LAWS.
3. *Of the registry of* — see NAVIGATION LAWS.
4. *Of the title of* — see AMELIORATIONS, NAVIGATION LAWS, POSSESSION, SHIP'S REGISTERS, TITLE.
5. *Of the rights of* —
  - (a) *In cases of bottomry* — see BOTTOMRY.
  - (b) *In cases of damage* — see DAMAGE.
  - (c) *To demurrage* — see DEMURRAGE.
  - (d) *In cases of derelict* — see DERELICT.
  - (e) *For freight* — see FREIGHT.
  - (f) *In matters of prize* — see COSTS AND DAMAGES, PRIZE, RANSOM, RECAPTURE, RESTITUTION, SALVAGE (military), TRADE WITH THE ENEMY.
  - (g) *In cases of salvage* — see SALVAGE (civil).
  - (h) *To wreck* — see WRECK.

## II. OF PART-OWNERS, 268.

1. *Generally*, 268.
2. *Of the right of the moiety or minority to require bail for the safe return of the ship from a voyage of which they disapprove*, 269.
  - (a) *Of the jurisdiction of the High Courts of Admiralty and Chancery thereon*, 269.

## III. OF THE RESPONSIBILITY OF —, 270.

1. *Generally*, 270.
2. *For the acts of their employés*, 271.
  - (a) *Generally*, 271.
  - (b) *The master*, 271.
  - (c) *The supercargo*, 271.
  - (d) *The pilot*, 271.
  - (e) *The crew*, 272.
  - (f) *Other parties*, 272.
3. *Where the vessel is under charter-party*, 272.
4. *In cases of bottomry* — see BOTTOMRY.
5. *In prize matters* — see CAPTORS.
6. *For repairs, supplies, or necessities furnished to their ships* — see MATERIAL MEN.
7. *When engaged in the slave trade* — see SLAVE TRADE.
8. *For mariners' wages* — see WAGES.

## IV. OF THE CONJOINT LIABILITY OF THE SHIP AND THE OWNERS, 272.

## V. OF THE LIMITATION TO THE VALUE OF SHIP AND FREIGHT OF THE OWNER'S RESPONSIBILITY FOR LOSSES OR DAMAGE, 273.

1. *Under 7 Geo. 2. c. 15. and 26 Geo. 3. c. 86., and the construction thereof*, 273.
2. *Under 53 Geo. 3. c. 159., and the construction thereof*, 273.
  - (a) *Generally*, 273.
  - (b) *As to the value of the ship and the calculation of the freight*, 274.
  - (c) *As to the liability of the master being also part-owner*, 275.
  - (d) *As to foreign owners*, 275.
  - (e) *As to the jurisdiction of the Court of Admiralty thereunder*, 275.
  - (f) *As to costs*, 276.
3. *Extension of the foregoing statutes to Ireland*, 276.
4. *Under 6 Geo. 4. c. 125.*, 276.

## VI. OF THE EXEMPTION FROM RESPONSIBILITY FOR LOSSES OR DAMAGE WHERE THE SHIP WAS IN CHARGE OF A DULY LICENSED PILOT, 276.

1. *On general principles*, 276.
2. *Under the old Pilot Acts, and the construction thereof*, 277.
3. *Under 6 Geo. 4. c. 125., and the construction thereof*, 277.
  - (a) *Generally*, 277.
  - (b) *As to foreign vessels*, 278.
  - (c) *Where the pilot was in the permanent employ of the owners of the damaging vessel*, 279.
  - (d) *Of the duties of the master and crew in order to found such exemption*, 279.
  - (e) *Of the duties in the management of the vessel within the province of the pilot*, 280.
  - (f) *Where the damage was occasioned by the joint misconduct of the master and crew and of the pilot*, 280.
  - (g) *Where the damage was occasioned by an accident for which neither the pilot nor the master and crew were to blame*, 281.
  - (h) *In the case of a steam tug acting under the orders of the pilot of the vessel in tow which did the damage*, 281.
  - (i) *Of the mode of pleading and raising such exemption* — see PRACTICE, cap. VIII.
4. *Under local Pilot Acts, and the construction thereof*, 281.

## I. OF OWNERS GENERALLY.\*

1. In a Court of the Law of Nations the 26 Geo. 3. c. 60., requiring the name of every owner to appear in the ship's register, and the established rule confining the claims of third parties, if British subjects, to registered owners, *held* binding on British subjects only, and not to bar foreigners from preferring a claim against a *bond fide* owner not inserted in the ship's register. *The Nostra Signora de los Dolores, Morales*, 1 Dodson, 296.

2. A party actively and directly concerned in the purchase and outfit of the vessel, in the appointment of the master, and in the subsequent management of the vessel, whose name, however, was not inserted in the ship's register, bill of sale, or letters of marque, *held* to have been a *bond fide* owner, and responsible as such to a foreigner. The representative of such owner accordingly held responsible for costs and damages decreed to the foreigner. *Ibid.*

3. The having received from the underwriter payments as for a total loss on capture, in which, however, restitution had been afterwards obtained upon terms, *Held* not to preclude the assured from suing and endeavouring to obtain restitution on a subsequent capture of the same vessel. *Robertson v. Hamilton* (1811), 14 East, 522.

4. Where the master, in consequence of damage sustained on the voyage, and of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England, but the owners, refusing to ratify the sale or consent to the registry of the ship in the plaintiffs' names, put men on board to take possession of her and the cargo: the Court of Chancery, considering it a question of purely legal title, and the taking possession a mere trespass, refused to interfere by in-

junction to restrain the owners. *Held*, also, that if the plaintiffs had acquired no legal title by the purchase, they had no lien in respect of the monies laid out by them in the repairs, nor could the bill of sale of the ship be treated in the nature of bottomry; the plaintiffs would, however, be entitled, on the case made out by the bill, to relief in respect of the bill of exchange given for the purchase-money, if they failed as to the legal title, and were entitled to have the legal right put in course of determination, and be protected in the meantime. And *semble*, if any injury or removal were threatened to the property, or if the plaintiffs had contracted engagements the fulfilment of which might be prevented by the conduct of the defendants, the Court might interfere by injunction. *Ridgway v. Roberts*, 4 Hare (V. Ch.) 106.

## See SHIPS.

## II. OF PART-OWNERS.

## 1. Generally.†

5. A co-partner cannot institute a suit for accounts in the Court of Admiralty. *The Apollo, Tennant*, 1 Hagg. 313.

6. One part-owner cannot recover damages against another by an action-at-law on a charge of wilfully and deceitfully sending the ship to foreign parts, where she was lost. *Graves v. Sawyer*, Sir T. Raym. 15., 1 Keb. 38., 1 Lev. 29., Abb. Sh. 100.

7. *Held*, also, in the Court of Chancery that one part-owner cannot have redress in equity against another for the loss of a ship sent to sea without his assent. *Strelley v. Winson*, 1 Vern. 297., Skin. 230., Abb. Sh. 100.

8. The possession of one owner is the possession of all. *Exp. Machel*, 1 Rose, 447., 2 V. & B. 216.

9. A part-owner of a ship is not necessarily a partner. *Helme v. Smith*, 7 Bing. 709., 5 M. & P. 744.

\* 1. A shipowner may demise his ship for a term, surrender all control over the ship itself, the appointment of her master and mariners, and even relieve himself from responsibility for wages and repairs. If he do so, the person to whom he lets the ship, who is called the charterer, becomes owner *pro tempore*, and the rights of the absolute owner are suspended. *Abb. Sh.* 288.

2. See 9 & 10 Vict. c. 100. as to the duties of owners of steam-vessels to transmit to the Board of Trade declarations of good condition of ships and machinery, and to report accidents and damages thereto, and probable loss thereof.

† 3. If there be many owners, the ship shall be employed by consent of the majority. *Sho. 13.*, *Skin. 230.*

4. Where bail is given by the majority or a moiety of the owners, in the Court of Admiralty, to the other owners for the safe return of the ship from a voyage of which the latter disapprove, no part of the profits or expense of the voyage is borne by or shared between the dissentient owners. *Smith's Merc. Law*, 175., and cases there cited, *Abb. Sh.* 171.

10. The owners of a ship are not interested in it as joint-tenants, but as tenants in common. Upon a bankruptcy, therefore, the bankrupt's share passes to the creditors under the bankruptcy without being liable specifically to the claims of the other part-owners, in respect of their disbursements and liabilities for the ship. *Exp. Harrison*, 2 Rose, 76.; *Exp. Young*, 2 Vea. & B. 242.

11. Security having been given in the Court of Admiralty by the majority of the owners of a ship for the share of an owner dissenting from the proposed voyage, and the ship having earned freight on that voyage, *Held* (after reference to Sir Leoline Jenkins, who certified the Law Marine and course of the Admiralty so to be,) that the dissentient part-owner was not entitled to any share of the freight earned on that voyage. *Anon.* (32 Car. 2.), 2 Chan. Cases, 36., 6 Vin. Abr. 514.; *Boyon v. Sandforth*, Carth. 63.

12. A part-owner of a ship, which had been let to the East India Company for a voyage to India, after the other part-owner had expended a large sum in repairing and fitting her out for the voyage, arrested the ship by process out of the Admiralty Court, and compelled the other part-owner to give security for his share. The ship afterwards sailed to India and returned home: *Held* that the part-owner who had taken the security was not entitled to any share of the profits of the voyage, but was bound to pay his proportion of the repairs and outfit. *Davis v. Johnston*, 4 Sim. 539.

13. Where one part-owner of a ship freighted her expressly against the consent of the other, and the ship and cargo were lost: *Held* that the loss fell wholly on the partner who freighted. *Horn v. Gilpin*, Amb. 255.

14. Although a part-owner may sell his share, the Admiralty cannot compel him. *Ouston v. Hebden* (1745), 1 Wils. 101.

15. One shipowner cannot bind another unless the names of both appear together as owners in the same registry. *Campbell v. Stein*, 6 Dow, 135.

16. *Quære*, as to the power of one part-owner of a ship to appoint a master, and displace a master appointed by another

part-owner. *Bowen v. Fox*, 5 M. & R. 5., 10 B. & C. 41., 4 Car. & P. 452.

2. *Of the rights of the moiety or minority to require bail for the safe return of the ship from voyages of which they disapprove.\**

17. Where there are several part-owners of a ship, the minority may arrest the ship in the Admiralty Court, and compel a security to be given by the others before they shall be permitted to navigate out of port. *Ouston v. Hebden*, 1 Wils. 101.

*And see div. (a), infra.*

(a) *Of the jurisdiction of the High Courts of Admiralty and Chancery thereon.*

18. The Court of Admiralty has authority to arrest a ship upon the application of a part-owner who dissents from her intended application, to compel the other part-owners to give security to him to the full value of his share for her safe return, and to enforce the same on the vessel being lost. A ship arrested in such a case, and bail decreed and given accordingly. *The Apollo, Tennant*, 1 Hagg. 306. 311.

19. On motion for prohibition to the Court of Admiralty, in a suit on a stipulation given there by the majority of part-owners for the safe return of a ship, *held* that the Court of Admiralty might take stipulations for bail, and proceed upon them, and that it was constantly allowed, notwithstanding Co. 4 Inst. 135., and the statutes 13 R. 2. c. 5., 15 R. 2. c. 3., and 2 Hen. 4. c. 11. (overruling *Justice v. Brown*, Hardres, 473., and *Knight v. Berry*, Rep. temp. Holt, 647., 1 Show. 13., Comb. 109., Carth. 26., and see 3 Salk. 23.). *More v. Rowbotham*, 6 Mod. 162.; *Dimmock v. Chandler*, Stra. 890; *Blacket v. Ansley*, 1 Ld. Raym. 235.; *Lambert v. Acretree*, Ibid. 223.; *Ouston v. Hebden*, 1 Wils. 101.; *Degrave v. Hedges*, 2 Ld. Raym. 1285., Abb. Sh. 102.

20. The Court of Admiralty is open all the year round to applications by part-owners to restrain the sailing of ships without their consent, until security be given to the amount of their respective shares; but where the shares are not ascer-

\* 5. Part-owners to the extent of an equality of interest, dissenting from the employment of a ship in a particular voyage, may, according to the opinions of Godolphin and Molloy, adopted in the practice of the Court of Admiralty, arrest the ship

there and compel security from the other part-owners, to the value of their shares, for the safe return of the ship. Abb. Sh. 103., *Introduction to Godolphin's Adm. Jur.*, and *Smith's Merc. Law*, 175 and see the cases there cited.

tained, that Court has no jurisdiction; and in such case the Court of Chancery will exercise a concurrent jurisdiction, by injunction, to restrain the sailing of the ship until the share of the party complaining shall be ascertained, and security given to the amount of it. In this case it was referred to the Master to make inquiry, and to settle the security. *Haly v. Goodson*, 2 Mer. 77., 2 Dod. 420., Abb. Sh. 104.\*

21. Injunction to restrain the sailing of a ship, upon the application of a part-owner, refused where the ship was intended to sail the next day, and it did not appear by the affidavit filed in support of the motion that there were any circumstances to account for the plaintiff's delay in applying. *Christie v. Craig*, 2 Mer. 137., Abb. Sh. 104.†

22. *Quære*, whether bonds given in the Court of Admiralty for the safe return of a vessel should not be framed as for her return to any, not a particular port of this country. *The Margaret Tomison*, 2 Hagg. 278.

23. A bond for a ship's safe return may be enforced in the Court of Admiralty; but *quære*, only to the extent of requiring the amount of the bond to be paid into Court. *Ibid.* 277.

24. Application for forfeiture of bond given to minority of owners for the safe return of the vessel to a particular port in this kingdom, the vessel having been carried in distress, while on the homeward voyage, into another port of this country, where she was arrested in suits for wages and salvage, rejected as premature while

the vessel was within the jurisdiction of the Court, safe and unsold. *Ibid.* 275.

25. Security having been decreed and given by part-owners to another part-owner for the safe return of the ship from a voyage of which he disapproved, the vessel having been lost thereon, and the amount of bail, in consequence, brought into Court, application of the major part-owners for a reference to the registrar and merchants to inquire and report as to losses, demurrage, &c., incurred by them in consequence of certain alleged vexatious proceedings in Chancery, which had been taken by the part-owner, and had delayed the vessel; and that such amount might be deducted from the amount of bail brought in and paid over to them, refused, with costs, on the ground that the Court had no jurisdiction to make such inquiries; and that if it had, the proceedings were not vexatious, or such as to subject the party to the claim set up. *The Apollo, Tennant*, 1 Hagg. 306.

### III. OF THE RESPONSIBILITY OF —

#### 1. Generally. †

26. The representative of an owner is responsible (to the extent of the property inherited from him) for the acts of the owner. *The Nostra Signora de los Dolores, Morales*, 1 Dodson, 296.

27. In all causes of action which may arise from circumstances occurring during the ownership of the persons whose ship is proceeded against, no suit can be maintained against the ship where the owners

\* 6. The Court of Admiralty is open all the year round to an application by one or more of several part-owners to restrain the others, whether they constitute a majority or an equal number in interest, from sending the ship on a voyage without the consent of the applicant, until they have given adequate security to the extent of the value of his interest, and so as to secure him in case the ship should not safely return, at least to some port in England; and previously to taking the security, the value of each agreed share may be ascertained by the Marshall of the Court, and such value may on affidavit be impeached and increased so as to obtain higher security, and if the ship should be lost, the Court of Admiralty would immediately enforce payment of the stipulated sum with costs, without regard to any other disputed account between the owners, though possibly, if it could be shown that the applicant had occasioned the loss, that circumstance might induce the Court to suspend adjudication of immediate payment. The course of proceeding is to obtain a warrant to arrest the ship, whereupon, unless the required security be given,

she will remain secured in port. If no security be given, the only course is to file a bill in equity to compel an arrangement between the owners, for the Court of Admiralty has no power over the accounts relative to the ship, or to decree a sale of the shares, and it has, indeed, been supposed that even the Court of Chancery has no such power. 2 *Chitty's Gen. Prac.* 518.

† 7. An application to the Court of Admiralty for such security, or to the Court of Chancery for an injunction, must be made promptly or it will not succeed. *Ibid.* 519.

‡ 8. By the Marine Law, the ship and freight are bound to the performance of the covenants of the shipowner, and the goods to the performance of the covenants of the merchant. *Abb. Sh.* 284. Though, however, the ship and freight are by the terms of the charterparty expressed to be so bound, and this is conformable to the maritime law, there does not appear to be at present any mode of obtaining in this country the benefit of the security of the ship itself in specie, for the performance of such a contract made here. *Ibid.* 285.

are not personally liable, or where their personal liability has not been given up, as in bottomry bonds, by taking a lien on the vessel. The liability of the ship, and the responsibility of the owners in such cases, are convertible terms. The ship is not liable if the owners are not responsible, and *vice versa*. *The Druid, Newton*, 1 W. Rob. 399.

28. A ship may be liable where the owners would not be personally responsible, as in cases of lien upon a ship for seamen's wages or bottomry bonds, when the lien has been acquired before the existing owners made their purchase, as against the enforcement of the outstanding lien in a proceeding against the ship in the Court of Admiralty they would have no legal defence on the plea that the existence of the lien was unknown to them at the time the purchase was effected. *Ibid.* 398.

29. An innocent purchaser may be liable to have his ship arrested and sold for the payment of damages in a case where the former owners would have been responsible, and the damage was occasioned before the purchase was made, assuming the liability to have attached on the ship prior to the time when the ownership vested in the existing owners. *Ibid.* 399.

*See ante*, No. 1.

## 2. For the acts of their employés.

### (a) Generally.

30. A master is not liable in trespass for the wilful act of his servant done without his direction or assent: but he is liable to answer for any damage arising from the negligence or unskilfulness of his servant, acting in the course of his employ. *M'Manus v. Crickett*, 1 East, 106.; and see *Brucker v. Fromont*, 6 T. R. 659.

31. Masters are responsible for damage generally when occasioned by the negligence or unskilfulness of their servants in performing a lawful service, but not when occasioned by an illegal act of theirs, maliciously or wilfully done without the privity or approbation of their master. In a suit preferred against the owners of a steam-tug in respect of damage occasioned by the wilful and illegal acts of the master thereof in their employ, *Held*, that the owners were not responsible, those acts not being within the scope of the master's ordinary duties, nor directed or subsequently sanctioned by his owners. *The Druid, Newton*, 1 W. Rob. 391.

32. If before a suit is commenced a

master, being cognisant of an injury done by his servant, negotiate for the compensation of that injury by the payment of a sum of money out of Court, *quære* would he be so far concluded by such negotiation that he could not avail himself of any legal defence to the action? *Ibid.* 397.

*See AGENTS.*

### (b) The Master.

33. The Court will hold owners responsible for the acts of their masters within the scope of the authority committed to them, *viz.* for all errors of judgment, &c. *The Vibilia, Richardson*, 1 W. Rob. 15.

34. Owners are responsible for the acts of the master in those things that respect his duty under them, but not in those that do not respect his duty to them. *Boson v. Sandford* (1698), 3 Lev. 258.; *Boucher v. Lainson* (1774), Cas. temp. Hard. 85.; *Ellis v. Turner* (1800), 8 T. R. 531.

35. The act of the master binds the owner with respect to the conduct of the ship as much as if it were committed by the owner himself. *The Vrouw Judith, Volkerts*, 1 C. Rob. 151.; *The Columbia, Weeks*, *Ibid.* 156.

36. The master's agreement for pilotage services, not affected by collusion or fraud, would be as binding on the owner as if made in his own person. *The Nelson, Main*, 6 C. Rob. 227.

37. The report by the master of the ship to the owner that certain additional charges were due to the pilot, such charges not being allowable under the table of remuneration for pilot services annexed to the 6 Geo. 4. c. 125., fixing and confirming the remuneration for pilot services and forbidding all persons, under a penalty, from giving or receiving more, *Held* not to bar or conclude the owner from objecting to such charges. *The Adah, Martin*, 2 Hagg. 332.

*In cases of Blockade —*  
*see BLOCKADE.*

### (c) The supercargo.

38. In strict law every supercargo will bind his employer, although where law is administered with great indulgence, cases may arise in which the Court will not implicate the owner. *The Eenrom, Fronier*, 2 C. Rob. 8.

### (d) The pilot.

*See post, cap. VI.*

(e) *The crew.*

39. If one of a ship's crew do a wilful act of injury to another ship without any direction from, or privity of, the master, trespass cannot be maintained against the master, although he was on board at the time. *Boucher v. Noidstrom*, 1 Taunt. 568.

(f) *Other parties.\**

40. The owner of a barge on the Thames is liable for injury done by it, although by the Waterman's Act, 7 & 8 Geo. 4. c. 75., vessels must be navigated by freemen or apprentices to freemen, and the owner not being himself a freeman or apprentice had entrusted the navigation of his vessel to a person qualified under the act. *Martin v. Temperley*, 3 Gale & D. 497., 4 Ad. & E. N.S. 298.; but see *Milligan v. Wedge*, 12 Ad. & E. 737., 4 Per. & D. 714.

41. The owner of a barge upon the Thames lends it to another, who navigates it with his own men, who are guilty of negligence, in consequence of which mischief is done; *semble*, that the owner is not liable. *Scott v. Scott*, 2 Stark. 438. (Best); and see *Quarman v. Bennett*, 6 M. & W. 499., 4 Jur. 969.

3. *Where their vessel is under charterparty.†*

42. A steam-vessel was under charterparty for six months, the owners to keep it in order for the conveyance of goods, &c., from Newcastle and Goole, or such other coasting station as the charterer might from time to time employ it in. The crew were appointed by the owners but paid by the charterer, who was also to pay all disbursements. The charterer did not interfere with the navigation of the vessel; but while he was on board, through the

negligence of the crew, it ran against and injured the plaintiff's keel. *Held*, in an action brought against the owners, that they were liable. *Fenton v. The Dublin Steam Packet Company*, 1 Per. & D. 103., 8 Ad. & E. 835., Abb. Sh. 56.

43. If a ship be chartered to the Commissioners of the Navy as an armed vessel, and an injury be done to another vessel by the misconduct of the persons on board the former while a commander of the Navy and a King's pilot are on board, an action for the injury may be sustained against the owners of the chartered ship. *Fletcher v. Braddick*, 2 N. R. 182.

*See ante*, Note 1.

## IV. OF THE CONJOINT LIABILITY OF THE SHIP AND THE OWNER.

44. In a cause of collision in which an appearance had been given for the master and principal owner of the vessel proceeded against, motion *ex parte* before the hearing, founded on affidavit of the insufficiency of ship and freight to cover the alleged damage for warrant of arrest against the master rejected, and a further motion for a monition against him to pay the surplus reported by registrar and merchants to be due for damage and costs made after the damage had been pronounced for, also rejected, the ship, which was in possession of the Court, not having been sold. A subsequent motion for such a monition, after sale of the ship and the amount of the deficiency had been thereby ascertained, granted, and the monition not having been obeyed an attachment decreed and issued, under which he was imprisoned. *The Triune, Wardell*, 3 Hagg. 115. 117.

*See post*, Nos. 75, 76. 81. to 84.

\* 9. In the absence of the master the mate is entrusted with the care of the ship and the government and management of the crew, and if a seaman be wrongfully dismissed by him, the owners are liable therefor as the act of their agent. *Orne v. Townsend*, 4 Mason's (AMERICAN) Rep. 541.

† 10. The question whether the owner or the charterer be liable for injuries caused by the negligence or unskilful management of the vessel, is to be determined by the terms of the charterparty as explained by the circumstances of each particular case. A charterparty may be, and commonly is, a mere contract to carry goods, or it may be a contract for the hire of a ship manned and equipped for mercantile adventure; or it may be what it very rarely is, a lease of the hull of a ship to be navigated by a master and mariners hired and paid by the

charterer. In the first case no doubt can exist that the crew remain the servants of the owner; in the second a possession subservient to the employment of the vessel by the charterer, and a control over the mode of her navigation, may still be retained by the owner through his servants, the master and mariners, whose services he has let with the ship, and for whose negligence or unskilfulness he is therefore in both these cases responsible; but in the third case, if the possession and control of the ship had so completely passed from the owner to the charterer, that the latter appointed the master and crew, and directed not only her destination and employment, but the mode of her navigation, then probably he, and not the absolute owner, would be held responsible for the misfortune. *Abb. Sh. 57.*



V. OF THE LIMITATION TO THE VALUE OF SHIP AND FREIGHT OF THE OWNERS' RESPONSIBILITY FOR LOSSES OR DAMAGE.

1. *Under 7 Geo. 2. c. 15., and 26 Geo. 3. c. 86., and the construction thereof.\**

45. By 7 Geo. 2. c. 15. s. 1. owners of vessels shall not be liable for any loss or damage by reason of any embezzlement by the master or mariners of any goods shipped on board any vessel, or for any act, damage, or forfeiture done or incurred by the master or mariners, or any of them, without the privity or knowledge of the owners, further than the value of the vessel with the appurtenances and freight for the voyage wherein the embezzlement was committed.

46. By s. 2. if several freighters of merchandise suffer damage by reason of embezzlement of the master or mariners (as in s. 1.) in the same voyage, and the ship and freight be not sufficient to make compensation, they shall receive satisfaction in average in proportion to their losses, and they or the owners of the vessel may exhibit a bill in Equity for the discovery of the total amount of such losses, and also of the value of the ship and freight, and for equal distribution and payment thereof amongst the freighters or proprietors in proportion to their respective losses or damages, according to the rules of Equity.

47. By s. 4. nothing in this act shall discharge any person's remedy against the master and mariners, and the 26 Geo. 3. c. 86. s. 5. contains a similar enactment.

48. By the 26 Geo. 3. c. 86. s. 1. the liability of the owners of vessels for any loss or damage by reason of any robbery, embezzlement, &c., without the privity of the owners, is confined to the value of the vessel and freight, although the master and mariners are not concerned in or privy to such robbery, embezzlement, &c.

49. By the 2d section owners of vessels are entirely exempted from liability for any loss by fire.

50. By the 3d section owners of vessels shall not be liable for any loss happening to any gold, silver, diamonds, watches, jewels, or precious stones, by reason of any robbery, embezzlement, or secreting

thereof, unless the owner or shipper at the time of shipping insert in his bill of lading, or otherwise declare in writing to the master or owner of the vessel, the nature, value, and quality of such gold, &c.

51. The 4th section directs the mode of proceeding in Equity for a discovery of the losses and apportionment of the value of the vessel and amount of freight, provided such value and freight are not sufficient to make the freighter or proprietor full compensation, so that the parties may receive satisfaction in average.†

2. *Under 53 Geo. 3. c. 159., and the construction thereof.‡*

(a) *Generally.*

52. By 53 Geo. 3. c. 159. s. 1. no person or persons who is, are, or shall be owner or owners, or part-owner or owners of any ship shall be liable to answer for or make good any loss or damage arising or taking place by reason of any act, neglect, matter, or thing done, omitted, or occasioned without the fault or privity of such owner or owners, which may happen to any goods, wares, merchandise, or other things laden or put on board the same ship, or which may happen to any other ship or to any goods, wares, merchandise, or other things on board of any other ship, further than the value of his or their ship, and the freight due or to grow due for and during the voyage which may be in prosecution or contracted for at the time of the happening of such loss or damage.

53. By s. 2. the value of the carriage of goods, &c., and also the hire due or to grow due under any contract, except such hire as, in the case of a ship hired for time, may not begin to be earned until the expiration of six months after the happening of such loss or damage, shall be deemed freight within the meaning of that act.

54. By s. 3. in case any such loss or damage shall happen by more than one separate accident, act, neglect, or default, or on more than one occasion in the course of a voyage, or after the end of any voyage and before the commencement of another voyage, such loss shall be paid, compensated, and satisfied under this act, in the same way and to the same extent as if no other loss or damage had happened during

\* 11. Question as to the liability of the owners of a vessel beyond the value of their ship and freight, for loss or damage sustained by another vessel or its cargo through collision with it. *Potts v. Pollock & Co. (1837)*, 15 S. 879. (SCOTCH REP.)

† 12. The acts limiting the responsibility of shipowners have been held not to extend to lighters and gabbets. *Hunter & Co. v. M<sup>r</sup> Gowan and others*. 1 Bligh, 573., Abb. Sh. 401.

‡ The 53 Geo. 3. c. 159. is printed in the Appendix.

the same voyage, or after the end of any voyage and before the commencement of another voyage.

55. By s. 4. nothing in that act contained shall lessen or take away any responsibility to which any master or mariner of any ship may by law be liable, notwithstanding the master or mariner may be an owner or part-owner of the ship.

56. By s. 5. the act is not to extend to owners of any lighter, barge, boat, or vessel of any burden or description whatsoever, used solely in rivers or inland navigation, or any ship or vessel not duly registered according to law. *See ante, note 12.*

57. By s. 6. actions may be brought for damage by persons suffering loss, though others have sustained loss by the same accident.

58. Ss. 7. to 16. direct the mode of proceedings in Equity, in case the value of the ship, &c. is not sufficient to make compensation for damage to the different claimants.

59. By s. 17. the act is to be deemed a public act.

60. In cases of collision the ancient general maritime law enacted a full compensation out of all the property of the owners of the guilty ship, upon the common principle, applying to persons undertaking the conveyance of goods, that they were answerable for the conduct of the persons whom they employed, and of whom the other parties, who suffered damage, knew nothing, and over whom they had no control. *The Dundee, Holmes*, 1 Hagg. 109.

61. But Holland first introduced a limitation of the responsibility of owners to the value of the property of their own which they placed at hazard. England followed in successive statutes, and finally, by the act 53 Geo. 3. c. 159., subjected; in the first clause, the ship, tackle, apparel, and furniture, and its freight, and in the seventh and eighth clauses its appurtenances, to contribution in cases of collision. *Ibid.*

62. These last clauses are to be considered as explanatory of the first, and they are to be understood as virtually included in the first clause, and to derive an operation from it. *Ibid.*

63. The responsibility of shipowners in an action for damage by collision is limited, by 53 Geo. 3. c. 159., to the value of the wrong-doing vessel, and to the freight due or to grow due for her then voyage. Her owners having given bail unconditionally, in a sum *plus* the real value, to answer the action, *Held* not to have extended their responsibility thereby to the amount of

bail, or beyond the value of ship and freight. *The Richmond, West*, 3 Hagg. 431.

(b) *As to the value of the ship and the calculation of the freight.*

64. In the construction of the 53 Geo. 3. c. 159., limiting the liability of a shipowner for damage done by his ship, without his fault or privity, to the value of the ship and her appurtenances and freight, *Held*, that the value of the ship doing the damage must be ascertained as at the time of the accident, and that that value is the price at which she could be sold, which price must be ascertained, not by making deductions from her cost price proportioned to her age, but by a valuation and appraisement. *Dobree v. Schroeder*, 6 Sim. 291., 2 Mylne & C. 489.

65. *Held*, also, that the value of the ship is to be calculated at the time of the loss, and not at the time of the commencement of the voyage. *Wilson v. Dickson*, 2 B. & A. 2., Abb. Sh. 400. And that, in estimating the value of freight due or to grow due, money actually paid in advance is to be included. *Ibid.*

66. The 53 Geo. 3. c. 159. s. 1. is to be construed as if the words "with all her appurtenances" had been inserted after "ship or vessel," as in s. 7. *Gale v. Laurie*, 7 D. & R. 711., 5 B. & C. 156., Abb. Sh. 401., 1 Hagg. 109.

67. Whatever is on board a ship for the accomplishment of the objects of the voyage and adventure in which she is engaged, belonging to the owner, constitutes a part of the ship and her appurtenances, within the 53 Geo. 3. c. 159., and is liable for damage to another ship. The fittings of a packet or the guns of a privateer *Held* to be included under the word "appurtenances." *Ibid.*

68. The word "appurtenances" is not to be construed with reference to the abstract naked idea of a ship; but regard must be had to the relation borne by the articles in question to the actual service of the ship. Some things are universally appurtenances to a ship, *quod* ship, be its occupation what it may: particular things may become so from their immediate and indispensable connexion with a ship in the particular occupation to which she is destined and in which she is engaged. *The Dundee, Holmes*, 1 Hagg. 109.

69. The meaning of the word "appurtenances" of a ship, and what would and would not be construed to amount thereto, considered, and with reference more parti-

cularly to the 53 Geo. 3. c. 159. *Ibid.* 122—127.

70. Fishing stores of a vessel engaged in the Greenland fisheries held to be appurtenances within the meaning of the stat. 53 Geo. 3. c. 159., and liable thereunder in an action for damage against the vessel, her tackle, apparel, and furniture. Costs refused. *Ibid.* 109.\*

71. Rudder and cordage bought by the builder specifically for a ship complete or nearly, though not actually attached to it at the time of delivery to the purchaser, held to pass with the ship. *Woods v. Russell*, 5 B. & Ald. 942., Abb. Sh. 6.

72. "Appurtenances" include all such matters as are incidental to the working of a ship: *Held*, therefore, that the chronometer of a whaler forms part of the appurtenances of a ship within the meaning of the 53 Geo. 3. c. 159. *Langton v. Horton*, 6 Jur. 910., 1 Hare, 549., Abb. Sh. 401.

73. In calculating the value of freight liable for loss or damage under 53 Geo. 3. c. 159., the value is to be only the amount that the ship would have earned if she had completed her voyage, and not the amount estimated at the commencement of the voyage, if diminished by jettison or other losses. *Cannan and others v. Meaburn*, Abb. Sh. 400., 1 Bing. 465.

(c) *As to the liability of the master, being also a part-owner.*

74. The 53 Geo. 3. c. 159., limiting the responsibility of shipowners to the value of their vessel, does not affect the case of a master, also part-owner, having charge of the vessel, and occasioning a collision. *The Triune, Wardell*, 3 Hagg. 114.

75. In a cause of collision in which the damaging vessel had been arrested and an appearance given for the master, who was also a part-owner, and the damage was pronounced for, application to condemn the master, as such part-owner, in the excess of damage beyond the proceeds of the ship, under the 53 Geo. 3. c. 159., rejected, the Court holding that it was not competent to it to engraft a personal action against the master as part-owner upon a proceeding *in rem*. *The Hope, Hepburn*, 1 W. Rob. 154.

76. To render a master, being also a part-owner and guilty of neglect, responsible beyond the value of the ship and freight, he must be sued as master in the first instance. The proceeding must be by charging him with being the cause of the damage by his misconduct; and that cannot be done, directly or indirectly, in another suit. In a cause of collision in which damage had been pronounced for, motion to condemn a part-owner, who was on board and in command of the damaging vessel at the time of the collision, in the excess of the damage beyond the proceeds of the ship, rejected. *The Volant, Merchant*, *Ibid.* 385. 390.

77. In an action on the case against several defendants as shipowners, one of whom was also the master by whose fault the loss had arisen, *Held*, that the true construction of the 53 Geo. 3. c. 159. s. 1., founded on 7 Geo. 2. c. 15., was that if a sole owner be sued, and the fault or privity be in him, he would be excluded from the protection of the statute; but that where several owners are sued, there must be the fault or privity in each so to exclude them. *Wilson v. Dickson* (1818), 2 B. & A. 2.

(d) *As to foreign owners.*

78. The 53 Geo. 3. c. 159. does not extend to foreign ships or foreign owners. *The Dundee, Holmes*, 1 Hagg. 113.

79. In a cause of collision promoted against a Swedish vessel (prior to the 6 Geo. 4. c. 125.), which was condemned in the damage, an objection to the registrar's report, on the ground that the amount reported to be due in compensation for the damage exceeded the value of the ship and freight, to which, under the 53 Geo. 3. c. 159., the responsibility of owners was limited, overruled on the ground that that act was one of domestic policy not available to foreigners, and that no such rule of the Swedish law, constituting a mutuality of protection, was alleged. Report confirmed. *The Girolamo, Guiranovich*, 3 Hagg. 187.; *The Carl, Johann*, cited therein. *Ibid.*

\* 13. The lines and tackle employed in a whale fishery are not protected by a policy made upon a Greenland whale-ship, her tackle, apparel, and furniture. *Hoskins v. Pickersgill*, 1 Park on Ins. 97., 2 Marsh on Ins. 735., 3 Dougl. 223.

14. In the purchase of a ship, "her tackle, apparel, and furniture, and other instruments thereto belonging," the ship's boat is not conveyed by such

words. *Introduction to Godolphin's Adm. Jur.* But in insurance cases, *Held* that boats, rigging, and stores, were included under the terms "ship furniture, &c.," but that it depended on the usage of trade whether fishing tackle was included therein. *Ibid.*, Abb. Sh. 5. As to what is included under the term furniture of a ship, see 1 Park on Ins. 123. 126.

(e) *As to the jurisdiction of the Court of Admiralty thereunder.*

80. *Quære*, as to the right of the Court of Admiralty to be considered as a Court of Equity within the meaning of the 15th section of the 53 Geo. 3. c. 159. (limiting the responsibility of shipowners). The right of filing a bill in Equity, under such section, is given to owners for their protection, and not to claimants for their advantage; and that power, being created by the act, must be limited by the terms of it. *The Saracen*, 10 Jur. 398.

(f) *As to costs.*

81. The stat. 53 Geo. 3. c. 159., limiting the liability of owners to the value of the ship, appurtenances, and freight, does not extend to costs and interest. In a collision case, the value of the vessel condemned in the damage being only sufficient to discharge the amount of damage, the owner of the vessel condemned in the costs and interest. *The Dundee*, *Holmes*, 2 Hagg. 137. Prohibition in respect of this decision was applied for to the Court of Queen's Bench, but, after declaration and solemn argument, refused. *See post*, No. 84.

82. In causes of damage, owners are responsible, notwithstanding the 53 Geo. 3. c. 159., for costs, where the proceeds of ship and freight are insufficient to cover the damage sued for. *The Volant*, *Merchant*, 1 W. Rob. 390.

83. In a cause of collision in which the owner had appeared, but without giving bail, and the vessel proceeded against had been sold under a decree of the Court, but the proceeds were insufficient to answer the damage, the owner of the vessel personally condemned in the costs of the suit. *Quære*, might not a different consideration apply if no appearance had been given, and the proceedings had been *in pœnam* against the ship? *The John Dunn*, *Place*, 1 W. Rob. 159.

84. In a suit in the Admiralty for compensation for damage done by collision, the defendant, the owner of the vessel, appeared, and contested his liability: he did not release the vessel, which had been arrested, by giving bail, but allowed it to remain under arrest to answer the suit: *Held*, that the Court of Admiralty had jurisdiction to give costs beyond the amount of the value of the vessel, notwithstanding the statute 53 Geo. 3. c. 159. *Ex parte Rayne*, 1 Gale & D. 374., 5 Jur. 1083., Abb. Sh. 401.

3. *Extension of the foregoing statutes to Ireland.*

85. By 6 & 7 W. 4. c. 61. the provisions of 7 Geo. 2. c. 15., 26 Geo. 3. c. 86., and 53 Geo. 3. c. 159., are declared to extend to Ireland.

4. *Under 6 Geo. 4. c. 125.*

86. By 6 Geo. 4. c. 125. s. 54. the owner of any ship or vessel shall not be liable in any case of loss or damage under the 53d section of that act (by reason of no duly qualified pilot being on board) beyond the value of such ship or vessel and her appurtenances, and the freight due, or to grow due, for and during the voyage wherein such loss or damage may happen or arise.

VI. OF THEIR EXEMPTION FROM LIABILITY FOR LOSSES OR DAMAGE WHERE THE SHIP WAS IN CHARGE OF A LICENSED PILOT.

1. *On general principles.*

87. In a case of loss sustained in the navigation of a prize, *held* that the taking a pilot releases the captor from responsibility for the navigation of the vessel, unless it can be shown that the loss arose from want of obedience in the crew to the orders of the pilot, or from any cause assignable to the want of that control which the captor is bound to exercise over the crew. Demand for damage pronounced against accordingly. *The Portsmouth*, *note to William Hastie*, 6 C. Rob. 317.

88. Owners are responsible for damage occasioned by the mismanagement of a ship though under the care of a regular pilot, and acting in obedience to his directions. *The Neptune the Second*, 1 Dodson, 467.

89. If a British or foreign vessel take a pilot when not required by law to do so, such pilot is the servant of the owner, who is responsible for his acts. *The Girolamo*, *Guirranovich*, 3 Hagg. 170. 175.

90. The common law of the Court of Admiralty before the statute was that the taking a pilot on board, though he was duly authorized to act as a pilot, did not exempt the owners from responsibility for his acts. *The Eden*, 10 Jur. 297., 4 Notes of Cases, 460.

91. Before the General Pilot Act, 52 Geo. 3. c. 39., a master was not discharged from his responsibility for the acts of his crew, although done under the direction of a pilot, who, by the regulations of a statute,

superseded the master for the time in the government of his ship. *Boucher v. Noidstrom*, 1 Taunt. 568.; but see *Aldrich v. Simmons*, 1 Stark. 210.

92. Upon general principles, a party compellable to take a pilot is not responsible for his acts: *aliter*, where he elects to take him without any obligation to do so. The enjoining by statute the taking a pilot, and enacting in case of refusal payment notwithstanding of pilotage dues, *Held* to amount to a compulsion to take a pilot. *The Maria, Witt*, 1 W. Rob. 102. But if a pilot be taken merely in pursuance of the provisions of an act of parliament, *Quere*, how far is the liability of the owners on general principle thereby discharged? *The Agricola, Grayson*, 2 W. Rob. 19.

93. Owners are not responsible for the acts of a pilot in charge of their vessel where the pilot is taken on board by compulsion, nor where they are expressly absolved from responsibility by statute; but in all other cases they are responsible for the acts of the pilot. Where, therefore, a collision took place in Cork Harbour, the damaging vessel being at the time in charge of a Cork pilot, under the Cork Pilot Act (1 Geo. 4. c. 52.), *held* that the owners were responsible for the damage, though occasioned by the act of the pilot only, the employment of such pilot not being compulsory by the Cork Pilot Act, and the provisions of the General Pilot Act (6 Geo. 4. c. 125.) being held not to extend to Ireland or to touch the Cork Pilot Act. *The Eden*, 10 Jur. 296., 4 Notes of Cases, 460.

## 2. Under the old Pilot Acts, and the construction thereof.

94. An action cannot be maintained against the master of a vessel for running down a ship in the river Thames while, in pursuance of the Pilot Act, he has a pilot on board, no positive default in the master being proved. *Bennet v. Moita* (1815), 7 Taunt. 258., 1 Moore, 4., Holt, 359.; *S. P. Ritchie v. Bousfield* (1816), 7 Taunt. 309., Abb. Sh. 207.; and see *Coatts v. Herbert*, 3 Stark. 12., and *Fletcher v. Brad-dick*, 2 N. R. 182., Abb. Sh. 55.; *Stort v. Clements*, N. P. 107.

95. The General Pilot Act (52 Geo. 3. c. 39.) *held* not to operate on the Liverpool Pilot Act (37 Geo. 3. c. 78.), so as to render the taking on board a pilot, licensed under the Liverpool Act, in the waters for which he was licensed, compulsory upon owners, and not therefore to exempt owners from responsibility for damage arising from the acts of such pilots. *Attorney-General v. Case* (Exchequer), 3 Price, 302.; but *contra*, *Caruthers v. Side-bottom* (Queen's Bench), 4 Maule & Selwyn, 77.\*

96. The General Pilot Act, 52 Geo. 3. c. 39., did not confine the exemption to loss or damage happening to the piloted ship and cargo, but extended to damage done by that ship to others. *Ritchie v. Bousfield*, 7 Taunt. 309.

97. It did not, however, apply to vessels having on board pilots appointed for other places than those expressly named in the preamble or provision of that act. *Attorney-General v. Case*, 3 Price, 302. Where that act did apply, the Crown was equally bound with the subject, although not named. *Ibid*.

## 3. Under 6 Geo. 4. c. 125., and the construction thereof.†

### (a) Generally.

98. By 6 Geo. 4. c. 125. s. 53. no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person whatsoever, by reason of no licensed or duly qualified pilot being on board, unless it shall be proved that the want of such pilot arose from any refusal of the master to take such pilot on board, or from his not heaving-to or using all practicable means consistently with the safety of the ship, for the purpose of taking on board any such pilot offering to take charge of the same.

99. By 6 Geo. 4. c. 125. s. 55. no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel under or in pursuance of any of the provisions of this

\* 15. These two cases are not easily reconcilable with each other, but it may be inferred from the two cases considered together, that where the master is bound by an act of parliament under a penalty to place his ship in the charge of a pilot, and does so accordingly, the ship is not to be con-

sidered as under the management of the owners or their servants, but when it is in the election or discretion of the master to take a pilot or not, and he thinks fit to take one, the pilot so taken is to be considered as a servant of the owners. *Abb. Sh.* 208.

† This act is printed in the Appendix.

act where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.

100. British ships (and *semble* foreign vessels) having pilots on board, pursuant to 6 Geo. 4. c. 125., are, by such statute, exempted from responsibility for damage occasioned by them to other vessels in consequence of the neglect or incompetency of the pilot. *The Christiana, Larsen*, 2 Hagg. 188.

101. In a case of damage, the owners of the damaging vessel having voluntarily taken a duly licensed Trinity House pilot on board, under the provisions of the General Pilot Act (6 Geo. 4. c. 125.), *held* to be absolved from responsibility, the accident having been entirely caused by the misconduct of the pilot alone, and having occurred within the waters for which he was licensed. No costs given. *The Fama*, 2 W. Rob. 184.; and *Lucey v. Ingram*, therein cited.

102. But *quære* whether such exemption would have enured in the case of a pilot licensed only by a corporation or company under the provisions of an act of parliament peculiarly referring to such corporation. *Ibid.* 185.

103. In a cause of damage preferred by the owners of a foreign vessel in respect of a collision occasioned off Dungeness by the vessel proceeded against, which was proceeding at such time in a direction from London Bridge to the Isle of Wight, and in which it had been decided that the collision was occasioned solely by the default of the pilot in charge of the vessel proceeded against: claim of the owners to an exemption from responsibility under the General Pilot Act, 6 Geo. 4. c. 125., opposed, on the ground that the pilot on board was one licensed by the Trinity House, and not by the Lord Warden of the Cinque Ports, the proper authority within the locality where the accident occurred, according to sections 2 and 14 of such statute, pronounced for, the Court, upon the facts of the case, *holding* the pilot to have been duly licensed by the proper authority of the locality. *Quære*, had the vessel proceeded against been proceeding in a direction from the Isle of Wight to London Bridge, would a Trinity House pilot be a duly licensed pilot for the locality in question? *The Vernon, Gimblett*, 1 W. Rob. 316.

104. A vessel had to deliver part of her cargo at the London Docks, and part at a

wharf higher up the river. She went to the Docks under the charge of a pilot, who left her there, where she remained some time without discharging any of her cargo, as the part to be left at the wharf was uppermost. She then went, under the charge of another pilot, up the river to the wharf; and, by the neglect of the pilot, ran down a barge. *Held* that, under 6 Geo. 4. c. 125. s. 55., the pilot alone was answerable, and not the owners, as they were bound to have a pilot on board at the time, and that it was not a mere change of mooring. *McIntosh v. Slade*, 6 B. & C. 657., 9 D. & R. 738., Abb. Sh. 210.

105. In an action on the case against the owner of a vessel for damage occasioned by her having run foul of the plaintiff's barge in the Thames, it was alleged on the part of the defendant that the accident occurred whilst the ship was in charge of a duly licensed pilot in pursuance of the 6 Geo. 4. c. 125., and that the damage was occasioned by the misconduct of the pilot; to which it was replied, that prior to the collision the vessel had, on completing a voyage from India, been brought by a licensed pilot into the St. Katherine's Dock, and that having there discharged her cargo, she was at the time of such collision in the course of removal, for the purpose of going out of that dock to a certain dry dock in the port of London to be repaired, and was not at such time otherwise navigating or passing upon the Thames: *Held* first, that the circumstance stated in the reply brought the case within the exception in the 63d section of the act, and that the owner was not bound to employ a pilot; secondly, that the words "wanting a pilot," in the 72d section, were not to be confined to such vessels as are, by the provisions of the act, bound to take a pilot, but are to be construed as applying to any vessel, the master or owner of which thinks fit to require one; thirdly, that inasmuch as under the 72d section the pilot could not lawfully refuse to go on board and take charge of any vessel wanting a pilot when required by the owner to do so, he must be considered, when so required and employed, as acting under some of the provisions of the act, and not as the private servant of the owner; and, therefore, that the owner was protected by the 55th section of the act from his *primâ facie* liability in respect of the injury occasioned by the act of the pilot whilst he was so employed by the owner. *Lucey v. Ingram*, 6 Mee. & W. 302., Abb. Sh. 206.

*See post*, Nos. 112 to 117.

(b) *As to foreign vessels.*

106. A foreign vessel, though in charge of a duly licensed pilot, *Held*, notwithstanding the 6 Geo. 4. c. 125., to be responsible for damage occasioned by a collision, that act, as being an act of domestic policy, being held not to be available to foreigners to claim an exemption under from the operation of the general law. Damage pronounced for accordingly. *The Girolamo, Guiranovich*, 3 Hagg. 169. *Seible* overruled by *The Maria, Witt*, 1 W. Rob. 95.; and see *The Protector, Edgar*, *Ibid.* 45.

107. A foreign vessel in charge of a pilot having been held blameable in a collision, the Court remarking that it had no power to condemn the pilot in the amount of his bond, pronounced for the damage and costs as against the foreign vessel. *The Carolus Rotgers, note to The Gladiator, Britten*, 3 Hagg. 343. (*But see antè, No. 106.*)

108. In a suit for damage against a foreign vessel, appearance under protest, on the ground of a licensed pilot being on board, afterwards waived and an absolute appearance given. Damage subsequently pronounced for. *The Eolides, Malngram*, *Ibid.* 367. (*But see antè, No. 106.*)

109. The provisions of the 6 Geo. 4. c. 125., exempting owners from responsibility for damage arising from the default of a duly licensed pilot, extend to cases where the damage is done by a British ship to the property of foreigners as in cases entirely between British subjects, on the general principle of international law, that the party seeking a remedy must take it according to the law of the country in which it is to be enforced. *The Vernon, Gimblett*, 1 W. Rob. 317. 319.\*

*See antè, No. 100.*

(c) *Where the pilot was in the permanent employ of the owners of the damaging vessel.*

110. In the case of a collision happening by the fault of the pilot, who was duly licensed, but had been in the permanent employ of the owners of the vessel doing the damage and engaged in navigating the ship for many years, *Held* that the owners were exonerated from responsibility under

the Pilot Act, 6 Geo. 4. c. 125., notwithstanding the fact of the pilot having been so permanently employed by them. *The Batavia*, 10 Jur. 19., 4 Notes of Cases, 456.

(d) *Of the duties of the master and crew in order to found such exemption.*

111. The master is answerable for the negligence of his crew, though committed under the directions of a pilot, who for the time supersedes him in the government of the ship. *Boucher v. Nordstrom*, 1 Taunt. 568.

112. A vessel in charge of a duly licensed pilot under 6 Geo. 4. c. 125. is not responsible, either in a suit *in rem* in the Court of Admiralty or personally at Common Law, for damage occasioned to another vessel by reason of the neglect or incompetency of the pilot, but *aliter*, though a pilot be on board, where the damage is occasioned by the misconduct of the master and crew. *The Protector, Edgar*, 1 W. Rob. 45. [overruling the judgment of Sir John Nicholl in the case of *The Transit* (1838), 1 Monthly Law Mag. (Notes of Cases), 582.]

113. Upon general principles a vessel doing damage is *primò facie* responsible for it, and her owners, in order to discharge themselves from such responsibility under the exemption conferred by the Pilot Act, 6 Geo. 4. c. 125., must bring themselves clearly within the same. This exemption construed to be limited to vessels doing damage solely through the incapacity or misconduct of the pilot taken on board under the provisions of that statute. *The Diana, Greig*, 1 W. Rob. 131.

114. The 6 Geo. 4. c. 125. s. 55. does not exempt the owners and masters of vessels having a licensed pilot on board from liability in respect of damage done by their vessels, unless the damage was solely caused by the neglect, default, incompetency, or incapacity of the pilot. Where, therefore, it was proved that the accident happened partly through the carelessness of the master and crew, and partly through the neglect of the pilot in not keeping a good look-out, the Judicial Committee of the Privy Council *Held*, affirming the decision of the Court of Admiralty, that the civil liability of the owner in respect of damages continued. *Stuart v. Isenmenger*, (*The Diana*), 4 Moore, 11.

\* 16. The 6 Geo. 4. c. 125. s. 55. held applicable to foreign ships. *The Atlas*, 5 Notes of Cases, 54.

115. The *onus* of proof of the damage being attributable to the pilot must be sustained by the party claiming exemption from responsibility under the statute. *The Protector, Edgar*, 1 W. Rob. 45.

116. Where a vessel is proceeded against in respect of a collision occurring whilst she was in charge of a duly licensed pilot, to render the owners responsible the Court must be able to come to a clear conviction that there was actual neglect or want of care on the part of the master or of the crew, and if the evidence should be nearly balanced the Court will not pronounce affirmatively. *The George*, 9 Jur. 672., 4 Notes of Cases, 161.\*

117. Owners are under the statute 6 Geo. 4. c. 125. exempt from responsibility for damage arising from the default of the pilot, whether the pilot be taken on board in obedience to the compulsory enactment of the statute or under certain other clauses thereof. *The Duke of Sussex, Forss*, 1 W. Rob. 273.

118. In cases of obvious danger the master is bound to interfere in the management of the vessel, although a licensed pilot be in charge of her. *The Girolamo, Guiranovich*, 3 Hagg. 169. 176.

119. It would be a most dangerous doctrine to hold, except under extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation. *The Maria, Witt*, 1 W. Rob. 110. But it is his duty to look after the pilot in the case of palpable incompetency, of intoxication, or of the loss of his faculties; and *semble* if the master see that the pilot is incompetent, he is not blindly to follow his orders. *The Duke of Manchester*, 10 Jur. 865.

120. The mere fact of taking a pilot on board under the provisions of the statute 6 Geo. 4. c. 125. does not exonerate the master and crew from the proper observance of their own duty. Although the directions of the pilot may be imperative

upon them as to the course the vessel is to pursue, the management of the ship itself is still under the control of the master. It is his duty to secure the safe conduct of his vessel by issuing the necessary orders, and that of the crew to carry those orders into execution, and for the due performance of their relative duties the master and crew are still respectively responsible, and through them the owners. It is the duty of the master and crew, *inter alia*, to keep a proper look-out. *The Diana, Greig*, *Ibid.* 135.

121. A vessel is only under the direction of the pilot for the purpose of navigation. In a case of collision the master is the proper party to give directions for the cutting away a lanyard, where such a course may be necessary to prevent further damage. He is not to wait for the pilot's directions thereon, which would tend to create great confusion and delay. *The Massachusetts, Pritchard*, *Ibid.* 373.†

(e) *Of the duties in the management of the vessel within the province of the pilot.*

122. In the case of a vessel taking up her berth in dock the time and manner of dropping the anchor is exclusively within the province of the pilot. *The Agricola, Grayson*, 2 W. Rob. 10.

123. The manner in which a ship should be brought into a roadstead is entirely within the province of the pilot in charge, by whose judgment the master of the ship must be guided. Therefore, where an accident by collision occurs in consequence of the pilot's error in this respect, the statute will intervene, and the owners of the ship will not be responsible for the damage caused by the pilot's want of judgment. In a cause of damage by reason of such a collision, the ship proceeded against dismissed accordingly, but, under the circumstances, without costs. *The George*, 9 Jur. 670., 4 Notes of Cases, 161.

\* 17. To exempt owners of a vessel from liability for damage under the 6 Geo. 4. c. 175., by reason of a duly licensed pilot being on board, it must be shown that the damage was occasioned solely by the neglect, default, or incapacity of the pilot, and the *onus* of proof thereof is on the vessel claiming such exemption from liability. In such a case the owners held responsible for damage, on the ground that they had not sufficiently discharged themselves of that *onus*. *The Manchester*, (7 July, 1840), 8 Monthly Law Mag. (Notes of Cases), 183.

† 18. Where it is an admitted fact that the damage has been done by a vessel having a pilot on board, it is her duty to show that the damage

was occasioned, not by the default or neglect of her own crew, but "from or by reason or means of some neglect, default, incompetency, or incapacity of the licensed pilot." *The Atlas*, 5 Notes of Cases, 52.

19. Where, however, a foreign ship was moored in Falmouth harbour, and a British ship having a licensed pilot on board, in anchoring ran foul of her and caused damage: *Held*, that some blame being imputable to the pilot, and there not being sufficient evidence to fix any blame on the crew of the British ship, her owners were exonerated and the suit dismissed accordingly, but without costs. *Ibid.*



(f) *Where the damage was occasioned by the joint misconduct of the master and crew and of the pilot.*

124. The exemption from liability conferred by the Pilot Act, 6 Geo. 4. c. 125., *Held* not to apply where the damage was occasioned by the joint misconduct of the pilot and the master and crew. The exemption is to be construed strictly. The pilot having taken a wrong course, and the master and crew not having kept a proper look-out; the owners of a vessel condemned in damage thereby occasioned, with costs from the time the act on petition was written to on the merits of the case. *The Diana, Greig*, 1 W. Rob. 131. 135. Affirmed on appeal. *Stuart v. Isomonger*, 4 Moore, 11.

125. In the case of a collision arising partly from the fault of a pilot (in not coming to an anchor in sufficient time) and partly from the fault of the owners (the weight of the anchors being defective) the owners *Held* responsible for the damage. *The Massachusetts, Pritchard*, 1 W. Rob. 373.

(g) *Where the damage was occasioned by an accident, for which neither the pilot nor the master and crew were to blame.*

126. The owners of a vessel which, whilst under the command of a duly licensed pilot, and doing every thing which was right and incumbent upon her to do, came into collision with another vessel, solely from her anchor not holding, are responsible for the damage, and cannot avail themselves of the exemption from responsibility conferred by the statute. *The Massachusetts, Pritchard*, 1 W. Rob. 371.

(h) *In the case of a steam-tug acting under the orders of the pilot of the vessel in tow, which did the damage.*

127. A steam-tug employed in towing a vessel, *Held* not responsible for damage occasioned by the vessel in tow coming in

contact with another vessel, the vessel in tow having had a licensed pilot on board at the time, under whose orders the steam-tug acted, and there having been no default on the part of the steamer. *The Duke of Sussex, Forss*, 1 W. Rob. 270.\*

4. *Under local acts, and the construction thereof.*

128. The owners of a foreign vessel which while proceeding up the river Tyne with a duly licensed pilot on board, under the provisions of the Newcastle Pilot Act, came into collision with another vessel, *Held*, but without costs, not responsible for damage in consequence of that collision, the collision being *held* to be occasioned by the default of the pilot, and the employment of him to be under the statute compulsory on the owners. *The Maria, Witt*, 1 W. Rob. 95.

129. A vessel sailed from Calcutta and arrived in London, where she discharged her cargo, and thence proceeded in ballast to Liverpool, *Held*, that the original voyage was not so completed by her arrival and delivery of cargo in London, as to admit of the voyage from London to Liverpool being considered as a coasting voyage within the meaning of the Liverpool Pilot Act, 5 Geo. 4. c. 73. s. 25.; that, therefore, under that act the master of such a ship, though in ballast, was compellable to take a pilot on entering the port of Liverpool; and that the owners were, therefore, exempted from responsibility for a collision occasioned by the default of the pilot only. No costs given. *The Agricola, Grayson*, 2 W. Rob. 10.

130. The master of a vessel having on board a licensed pilot, appointed by the Trinity House of Newcastle-upon-Tyne, under the local act 41 Geo. 3. c. 76. s. 6., is not entitled to the protection of the 55th section of the General Pilot Act, 6 Geo. 4. c. 125. *Dodds v. Embleton*, 9 D. & R. 27.

*See ante, Nos. 93. 95., and Note 15.*

## PAUPERS.

1. To sue as a pauper is a great privilege of law; it belongs only to the necessity arising out of absolute poverty, and from

the absence of any other mode of obtaining justice. No person is entitled to the gratuitous labour of others who can furnish

\* 20. Where the master of a coasting vessel hired a steam-tug *bond fide* for the purpose of towing his vessel up the river, *Held*, that although the employing such power necessarily devolved the

selection of the course and management of the ship, yet the object being solely the employment of the moving power, the party so employed was not within the meaning of the 6 Geo. 4. c. 125. s. 70.

the means of providing them for himself, besides, it places the adverse party under great disadvantages. It takes away one of the principal checks upon vexatious litigation — costs. The legal claim to so great a privilege ought, therefore, to be clearly made out. It is a complete, but not uncommon misapprehension of the law, to suppose that because a person is in insolvent circumstances, and because he can truly and conscientiously swear that he is not worth 5*l.* after all his just debts are paid, that therefore he is entitled to be admitted, or rather to proceed as a pauper; it is a *primâ facie* ground to admit him as such, but no more; if it were otherwise, many persons living in great splendour and luxury would be so entitled; for many persons in business, in the enjoyment of an immense income, and maintaining a proportionate expenditure, would not be worth 5*l.* after payment of their just debts. *Lovekin and Others v. Edwards and Others*, 1 Phill. 183.

2. A party in a condition to acquire property is not entitled to be admitted a pauper; a party discharged under the Insolvent Debtors' Act, a watchmaker by trade, *Held*, as being in a situation to obtain employment and remuneration, not to be entitled to be admitted a pauper. *Walker v. Walker*, 1 Curteis, 562.

3. A respondent may be admitted as a pauper in the Court of Appeal, and the Court looks to his faculties at the time of his application, not to what he may have been possessed of at a former time. *Taylor v. Morse*, 3 Hagg. (Eccl.) 179.

4. An appellant suing not as a pauper in the Court below, admitted a pauper in the Court of Delegates. *Grindall v. Grindall*, 4 Hagg. (Eccl.) 1.

5. A party who had been admitted to

sue in *formâ pauperis* dispauperised. *Lovekin and Others v. Edwards and Others*, 1 Phill. 179.

6. A party may commence a suit in *formâ pauperis*. In the goods of *Ann Jones deceased*, 1 Hagg. (Eccl.) 81.

7. A party conducting his own case in the first instance, but in the course of the suit admitted to sue as a pauper, condemned in costs, and the payment thereof enforced by attachment and committal. Application to supersede the attachment on the ground of his being a pauper rejected. *The Plym*, 2 W. Rob. 345.

8. A pauper so admitted in the middle of a suit in the Ecclesiastical Court may at least be condemned in costs up to the time of his being admitted a pauper. *Filewood v. Cousens and Others*, 1 Add. 286.

9. A pauper condemned in costs in the Ecclesiastical Court, the Court, however, reserving the question as to whether it would proceed, unless he should cease to be a pauper, to enforce a monition against him for their payment. *Rind v. Davies*, 4 Hagg. (Eccl.), 394.; and see *Le Mann v. Bonsal*, 1 Add. 399.; *Filewood v. Cousens and Others*, *Ibid.* 287.; *Wagner v. Mears*, 2 Hagg. (Eccl.), 531.

10. By the practice of the Court of Chancery, however, a sentence of costs against a pauper in proceedings there may be enforced against him by committal in default of payment. *Ex parte Shaw*, 2 Ves. jun. 40.; *Peirson v. Belchier*, 4 Ves. 630.

11. Where a pauper plaintiff sues several defendants, some of whom succeed, the costs of the successful defendant cannot be set off against the costs which the plaintiff is entitled to recover from the others. *Yougenheim v. Lane*, 4 Dowl. P. C. 482., 1 Mees. & W. 136., 1 Gale, 343.

## PILOTS.\*

### I. OF THE JURISDICTION OF COURTS AS TO —

1. *Of the High Court of Admiralty.*
2. *Of other tribunals.*

### II. OF THE EMPLOYMENT OF —

### III. OF THE MASTER'S CONTROL OVER —

### IV. OF THE REMUNERATION OF —

### V. OF THE RESPONSIBILITIES OF —

### VI. MISCELLANEA.

*Of the exemption of owners from responsibility for damage committed by — see OWNERS.*

as a pilot, and that he could not be deemed to have the charge or conduct of the vessel. *Beilby v. Scott*, 7 M. & W. 93., Abb. Sh. 270.

\* 1. The 6 Geo. 4. c. 125. (printed in the Appendix) consolidates the laws with respect to pilots and pilotage, and repeals the prior statutes thereon. It is amended by 9 Geo. 4. c. 86. and 3 & 4 Vict. c. 68.

2. Pilotage from Dover, Deal, and the Isle of Thanet, up the rivers Thames and Medway, is regulated by statutes 3 Geo. 1. c. 13., 7 Geo. 1. c. 21., and 43 Geo. 3. c. 152., revived and continued by 47 Geo. 3. stat. 2. c. 71. and 48 Geo. 3. c. 104. P. L. & P. Pilotage down the Thames and through the North Channel to or by Orfordness

# I. OF THE JURISDICTION OF COURTS WITH REFERENCE TO —

## 1. *Of the High Court of Admiralty.*

1. A pilot is a mariner, and as such may sue for his wages in the Court of Admiralty, unless the work be done within the body of a county, in which case he cannot, and a prohibition goes to the Court for entertaining such a cause. *Ross v. Walker*, 2 Wils. 264.

2. By the ancient maritime law, the Court of Admiralty has an equity to moderate or supersede extortionate contracts made under the pressure of necessity arising out of the situation of a vessel at sea. This jurisdiction might embrace a case of extortionate contract for pilotage services. *The Nelson*, Main, 6 C. Rob. 231.

3. The 87th section of 6 Geo. 4. c. 125. (the General Pilot Act) provides, that nothing in that act shall extend or be construed to extend to affect or impair the jurisdiction of the High Court of Admiralty.

*See post*, No. 12., and Note 5.

## 2. *Of other tribunals.\**

4. By 6 Geo. 4. c. 125. ss. 44. 46., pilotage of ships trading to and from the port of London may be recovered of the master

or owners, or their consignees or agents, like penalties imposed by that act, *viz.* (see ss. 76, 77.) in cases above 20*l.* by action of debt in the Courts at Westminster, to be commenced within twelve months; and in cases under 20*l.* by prosecution before a neighbouring justice of the peace within six months. In cases of foreign vessels, the proceedings are to be instituted by the corporation of the Trinity House.

# II. OF THE EMPLOYMENT OF —

5. By 6 Geo. 4. c. 125. s. 59. masters of certain ships may pilot the same without incurring penalties, so long as they are not assisted by unlicensed persons; by s. 60. his Majesty may authorise ships not exceeding sixty tons burden to be conducted without pilots; and by s. 62. the master or mate of any ship residing at Dover, Deal, or the Isle of Thanet, may pilot his own ship.

6. By s. 63. ships brought into any port by pilots may be removed by the master or other person, for the purpose of her going into or out of dock, or changing her mooring.

7. By s. 61. masters are not to be subjected to the penalties imposed by that act (for not employing pilots) on account of

and round the Long-Sand-Head into the Downs, and down the South Channel into the Downs, and from or by Orfordness up the North Channel and the Thames and Medway, by 5 Geo. 2. c. 20. Pilotage into and out of the port of Liverpool is regulated by 37 Geo. 3. c. 78. and 5 Geo. 4. c. 73., and the port of Hull by 39 & 40 Geo. 3. c. 10. P. L. & P. *Abb. Sh.* 195. a.

\* 3. The society of the Trinity House was incorporated by Henry VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, lighthouses, buoys, &c. A similar society, for the like purposes, was afterwards established at Hull, and also another at Newcastle-upon-Tyne, in 1537, which three establishments, says Hakluyt, were in imitation of that founded by the emperor Charles V. at Seville, in Spain. Henry VIII., by his charter, confirmed to the Deptford Trinity House Society all the ancient rights, privileges, &c., of the shipmen and mariners of England, and their several possessions at Deptford, from which it appears that the Society had existed long previously. Besides the power of erecting lighthouses and other seamarks, on the several coasts of the kingdom, for the security of navigation, the Master, Wardens, Assistants, and Elder Brethren are invested by charter with various other powers, the principal of which are, the examination of masters of her Majesty's ships, the appointment of pilots to conduct ships into and out of the Thames, the amercement in a pecuniary fine of such unlicensed persons

as presume to act as masters of ships of war or pilots, settling the several rates of pilotage, preventing aliens from serving on board English ships without licence, hearing and determining the complaints of officers and seamen of British ships, subject to an appeal to the Lords of the Admiralty, &c. — *McCulloch's Commercial Dictionary*, tit. *Trinity House*.

By 6 & 7 W. 4. c. 79. all lighthouses and lights on and round the coast of England and Wales are placed under the control and management of the Trinity House.

4. The Corporation of the Trinity House are empowered by long usage, grants from the Crown, and several statutes, after due examination, to license pilots for conducting vessels upon the Thames and Medway, and between London Bridge and the Downs, and the Isle of Wight, also to appoint sub-commissioners of pilotage for such other ports in England as they may think fit, except within the liberty of the Cinque Ports or other privileged places, and on their certificate of qualification to license pilots for such ports and fix their limits. The Lord Warden of the Cinque Ports, the Constable of Dover Castle, or his Lieutenant, are empowered to license pilots having an exclusive right of conducting vessels by Dungeness up the Thames and Medway to London Bridge and Rochester Bridge, and from the Brake to the Owers. See 6 Geo. 4. c. 125., 9 Geo. 4. c. 86., and 3 & 4 Vict. c. 68., *Palmer on Wreck*, 42.

their employing unlicensed persons as pilots whilst ships are in distress, or in consequence thereof, or when immediate assistance is required; and by s. 71. unlicensed persons may act as pilots if no duly licensed pilot offer his services, or if the ship be in distress or require immediate assistance.

8. By 6 Geo. 4. c. 125. s. 70., licensed pilots may supersede unlicensed persons in the charge of any ship, and such persons acting as pilots after a proper pilot shall have offered his services are liable to a penalty of from 20*l.* to 50*l.*

9. If a plaintiff in an action on the statute for not receiving a licensed pilot, who demanded to be taken on board and put in conduct of the vessel, do not prove the production by the pilot of his licence at the time of such demand, he will be nonsuited: *Usher v. Lyon*, 2 Price, 118.; although it be not demanded. *Hammond v. Blake*, 10 B. & C. 424., 5 M. & R. 261.

10. Where the master of a coasting-vessel hired a steam-tug *bond fide* for the purpose of towing her up the river, *Held*, that although the employing such power necessarily devolves the selection of the course and management of the ship, yet the object being solely the employment of the moving power, the party so employed is not within the meaning of the 6 Geo. 4. c. 125. s. 70. as a pilot, and that he could not be deemed to have the charge or conduct of the vessel, and that no penalty was therefore incurred under s. 70. *Beilby v. Scott*, 7 Mees. & W. 93.

11. By 6 Geo. 4. c. 125. s. 38., no pilot shall be taken to sea beyond his limits, without his consent, except in case of necessity, and then he shall receive 10*s.* 6*d.* *per diem* beyond his pilotage.

12. A pilot cannot sue for his wages earned in navigating a vessel into an enemy's port. It is tantamount to a trading with the enemy. *The Benjamin Franklin*, *Wicks*, 6 C. Rob. 350.

### III. OF THE MASTER'S CONTROL OVER—

13. In cases of obvious danger the master is bound to interfere in the management of the vessel, although a licensed pilot be in charge of her. *The Girolamo*, *Guiramonovich*, 3 Hagg. 169. 176.

14. It would be a most dangerous doctrine to hold, except under most extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation. *The Maria Witt*, 1 W. Rob. 110.

15. It is the duty of the master to look after the pilot in the case of palpable incompetency, of intoxication, or of the loss of his faculties; and *semble*, if the master see that the pilot is incompetent, he is not blindly to follow his orders. *The Duke of Manchester*, 10 Jur. 865.

### IV. OF THE REMUNERATION OF — \*

16. By 6 Geo. 4. c. 125. s. 8. the Corporation of the Trinity House shall establish rates for pilotage performed by pilots licensed on certificates, of which rates tables shall be hung up at the Custom Houses of the respective ports, and no greater or less rates shall be received or paid.

17. By s. 25. the rates of pilotage, contained in tables A. and B. to that act annexed, shall be demanded and received by pilots, duly licensed, for piloting ships to and from the places therein specified; and no greater or less rates or other reward shall be demanded or received by those pilots or paid by any party under a penalty of 10*l.* for each offence. By s. 26. power is given to the Corporation of the Trinity House and the Lord Warden of the Cinque Ports respectively, to vary these rates with the consent of the Privy Council.

18. The 6 Geo. 4. c. 125. regulates, in s. 46., the manner in which the pilotage of ships, not having British registers, and trading to and from the port of London, shall be paid; and, in ss. 49. and 50., the mode by which the amount of pilotage outwards shall be ascertained.

19. By 6 Geo. 4. c. 125. s. 34. any pilot-boat running before a vessel not having a pilot, and which cannot be boarded, shall be entitled to pilotage.

20. The act 3 Geo. 1. c. 13., fixing rates of pilotage, was limited to the particular society of pilots, *viz.* *Trinity Pilots*, therein described, who had the benefit of a monopoly under the provisions of that act, and the restrictions thereof were held to be

\* 5. The charge of pilotage is regulated at different places by usage or by statute, and generally increases in proportion to the depth of water which the vessel draws. It was determined that this

charge, under the old statutes, where the service was performed in a river within the body of a county, could not be recovered by a suit in the Court of Admiralty. *Abb. Sh.* 198.

taken as corresponding with the privileges conferred. Other pilots, therefore, engaged in the same navigation only casually, when the privileged pilots were out of the way, *Held* to be at liberty to make special agreements for higher compensation. Such an agreement pronounced for. *The Nelson, Main*, 6 C. Rob. 227.

21. Pilots are not entitled to charge as lay days the day on which they enter and on which they leave a place of quarantine. *The Bee, Wishart*, 2 Dodson, 498.

22. The docking of a ship is to be considered as equivalent to bringing her to ordinary moorings under the 6 Geo. 4. c. 125. *The Adah, Martin*, 2 Hagg. 330.

23. Claim of a pilot for an extra charge for taking a ship, which arrived before the West India Docks, her place of destination, too late, owing to the state of the tide, to be docked that day, into dock on the following day, pronounced against, on the ground that those services were included in the duty of pilots as set forth in the act 6 Geo. 4. c. 125., and that the remuneration for such services was also included in the table of charges annexed to the act, the duty of docking, admitted under the act to attach on the day of a ship's arrival, being *held* to extend to the next working tide after her arrival. *Ibid.* 326.

24. The tables A. and B., fixing the rates of remuneration to pilots in the 6 Geo. 4. c. 125., are to be considered together, and the allowances in one to be *held* as permitted in the other. *Ibid.* 328.

25. In extraordinary pilot services additional pilotage is the proper rate of reward. Double the ordinary rate of pilotage allotted by the Court, with 15*l.* *nomine expensarum*, in such a case. *The Enterprize, Crosbie*, 2 Hagg. 178. n.

26. If towing be necessary, pilots are bound to perform it, having a claim for compensation for any damage to their boats and for extra labour. *The General Palmer, Truscott*, *Ibid.* 179.

27. On application of a pilot for salvage by reason of his pilot-boat having been, at his recommendation, employed in towing the vessel for three hours, and during which the pilot-boat sustained some little damage, a tender of 20*l.* before and of 50*l.* after action having been refused, claim pronounced against, the Court and Trinity Masters holding such towage not to have been absolutely necessary, and that the pilot was bound to perform it, having a claim for extra labour, &c. and for compensation by reason of damage. Tender

pronounced for, but, under the circumstances, without costs. *Ibid.* 176.

28. Pilotage is confined to conducting into port a vessel in no state of distress or alarm, or having no apprehension of distress arising from antecedent causes: the scale of remuneration to pilots has been calculated on such definition. Where the pilot's services exceed mere pilotage, they are to be rewarded for them as salvors and not as pilots. Services rendered by pilots, though of no great merit, *Held* to exceed mere pilotage services, and 20*l.* awarded accordingly, overruling a tender of 10*l.* *The Elizabeth*, 8 Jur. 365.

29. It is a settled doctrine of the Admiralty Court, that no pilot is bound to go on board a vessel in distress, to render pilot service for mere pilotage reward. His refusal, under such circumstances, would subject him to no censure; and if he did take charge of a vessel so circumstanced, he would be entitled to a salvage remuneration. *The Frederick, Thurman*, 1 W. Rob. 17.

*See ante*, No. 11., and *post*, Nos. 36, 37, 38.

*See* SALVAGE (civil), *cap. VI. sect. 2. and cap. XIII. sect. 17.*

#### V. OF THE RESPONSIBILITIES OF —

30. The 6 Geo. 4. c. 125. imposes penalties on pilots for various offences: *viz.*, in s. 42., for quitting ships in the Thames or Medway without leave, and before the arrival of such ships at the places to which they are bound; in s. 66. for acting before their licences have been registered; in s. 68. for keeping public-houses (unless authorized), or offending against the Revenue Laws; in s. 69. for acting whilst suspended; in s. 72. for declining to go off to or take charge of vessels, or for illegally quitting same; in s. 73. for employing or requiring the employment of any boat, anchor, cable, &c. beyond what is necessary, and in order to increase the expense of pilotage; in s. 74. for lending their licences, for drunkenness, for conducting any vessel into danger, or for injuring the same, or obtaining charge thereof by misrepresentation; and in s. 75. for not obeying the orders of dock-masters.

31. A pilot who has the steering of a ship is liable to an action for an injury done by his personal misconduct, although a superior officer is on board. *Stort v. Clements, Peake*, 107. (Kenyon.)

32. By 6 Geo. 4. c. 125. s. 57. no licensed pilot, who has executed bond as directed

by that act, shall be liable, beyond the penalty thereof and the pilotage, for damages arising from his neglect or want of skill.

#### VI. MISCELLANEA.

33. The stat. 6 Geo. 4. c. 125. does not extend (see s. 86.) to compel ships in the Royal Navy to take pilots.

34. Foreign ships are not exempted from the operation of the stat. 6 Geo. 4. c. 125. requiring vessels to take pilots on board under penalties. *The Christiana, Larsen*, 2 Hagg. 188.

35. By 6 Geo. 4. c. 125. s. 56. this act is not to extend to deprive any person of any remedy on any contract of insurance, or of any other remedy whatsoever which he might have had if this act had not been passed, by reason of the neglect, &c. of any pilot duly acting in the charge of any ship in pursuance of the provisions of this act, or by reason of no pilot or no duly qualified pilot being on board, unless it be proved that the want of such pilot arose from the refusal of the master to take him on board, or from the wilful neglect of the

master in not heaving to and endeavouring to take on board any pilot offering to take charge of the ship.

36. By s. 45. the consignees or agents of any ship from whom any sum for pilotage shall have been recovered or be recoverable, or by whom pilotage shall have been paid, are empowered to retain the amount and expenses out of any monies received or to be received by them for or on account of such ship or the owners thereof.

37. The master's agreement for pilotage services, not affected by collusion or fraud, would be as binding on the owner as if made in his own person. *The Nelson, Main*, 6 C. Rob. 227.

38. The report by the master of the ship to the owner that certain additional charges were due to the pilot, such charges not being allowable under the table of remuneration for pilot services annexed to the 6 Geo. 4. c. 125., fixing and confirming the remuneration for pilot services, and forbidding all persons, under a penalty, from giving or receiving more, *Held* not to bar or conclude the owner from objecting to such charges. *The Adah, Martin*, 2 Hagg. 332.

#### PIRATES.\*

##### I. OF THE RESISTANCE TO BE MADE TO —

##### II. OF RECAPTORS FROM —

##### III. BONA PIRATARUM.

1. *Of the jurisdiction of the High Court of Admiralty as to —*
2. *Of the right to —*
  - (a) *Of former owners.*
  - (b) *Of the Lord High Admiral.*

##### IV. BOUNTIES ON THE CAPTURES OF PIRATES OR PIRATICAL VESSELS.

1. *Under 6 Geo. 4. c. 49., and the construction thereof.*
2. *Where held due — et contra.*
3. *Of the payment and distribution of —*
4. *As to the percentage to Greenwich Hospital on — see GREENWICH HOSPITAL.*

##### V. MISCELLANEA.

##### I. OF THE RESISTANCE TO BE MADE TO —

1. By 22 & 23 Car. 2. c. 11. s. 2. where

any goods shall be laden on board any English ship of the burden of 200 tons or upwards, and mounted with sixteen guns

\* 1. Piracy, in its most extended sense, is the committing such illegal acts on the high seas as would, if committed on shore, be felonious. (*Hawk. b. i. c. 37. s. 4.*) It is derived from a Greek word, which signifies to pass over the sea, and refers, therefore, rather to a place than a species of crime. (*3 Inst. 113.*) In its narrower and more popular sense, piracy signifies the stealing, or otherwise illegally using, every kind of shipping on the high seas. It differs from other offences in this, that a subject of another realm who owes, even for a time, no obedience to the laws of this country, is liable

to their operation, for piracy is an offence against the Law of Nations, constituting the criminal, in the language of Lord Coke, *hostis humani generis*.

2. As to what offences constitute piracy, see 11 & 12 W. 3. c. 7., 18 Geo. 2. c. 30.

3. The criminal statutes for the punishment of piracy are 28 Hen. 8. c. 15., 11 & 12 W. 3. c. 7., 18 Geo. 2. c. 30., 7 & 8 Geo. 4. c. 30., 1 Vict. c. 88., and 5 & 6 Vict. c. 28. s. 16.

4. The criminal jurisdiction of the Admiralty over pirates was abolished by 28 Hen. 8. c. 15.

or more, if the commander yield up the ship or goods to any Turkish ships or pirates without fighting, he shall, on proof thereof in the High Court of Admiralty, be incapable of taking charge of any English ship as commander; and if he afterwards take any such command, he shall suffer six months' imprisonment under a warrant from that Court, and in case the persons taking the goods shall release the ship, or pay the master any money or goods for freight, or other reward, such goods or money, or the value thereof, as also the master's share in such ship, shall be liable, by action in the High Court of Admiralty, to repair the loss to the persons whose goods were so taken; and in case the same shall be insufficient to repair such damages the same shall be divided *pro rata* among the owners of the goods so taken, who shall have their action against the master for the remainder.

2. By *s. 3.* no master of any such English ship being at sea, and having discovered any ship to be a Turkish ship or pirate, shall depart out of his ship.

3. By *s. 4.* if the master of any English ship, though not of the burden of 200 tons, or mounted with sixteen guns, yield his ship to any Turkish ship or pirate (not having at least double his number of guns) without fighting, he shall be liable to all the penalties in that act contained.

4. By *ss. 5. & 6.* on process out of the Court of Admiralty, all commanders of his Majesty's ships, or of any other English ships, may seize such ships or master so offending according to the process, and send them in custody to any ports of his Majesty's dominions, to be proceeded against according to *s. 2.*, but none shall be thereby encouraged to violate the rights of any foreign prince or state in amity.

5. By *s. 7.* if any of the mariners or inferior officers of any English ship, laden with goods, decline or refuse to fight and defend the ship when thereunto commanded by the master, or utter any words to discourage the other mariners from defending the ship, he shall, on being found guilty thereof, lose all his wages due, together with such goods as he may have in the ship, and suffer imprisonment not exceeding six months, with hard labour.

6. By *s. 8.* if any ship be yielded, contrary to the will of the commander, by disobedience of the mariners, the master shall not be liable to the sentence of incapacity, nor to any action for the losses sustained by the merchants, as directed in

*s. 2.*, unless he have received back his ship or some reward from the takers.

7. By *s. 11.* in case the company of any English merchant-ship shall take any ship which shall first have assaulted them, the officers and mariners shall, after condemnation of such ship and goods, have such part thereof as is practised in private men-of-war.

8. *Sect. 10.* directs the mode of allotting a reward not exceeding 2*l.* per cent. on ship and goods to officers and crew, where they shall defend their ship from pirates, and bring her to her port of destination.

9. By 8 *Geo. 1. c. 24. s. 6.* masters or seamen not defending themselves against pirates, or uttering discouraging words, shall, if the ship be taken, forfeit their wages to the owners, and suffer six months' imprisonment.

10. By *s. 5.* seamen maimed in fight against pirates shall, in addition to the rewards conferred by 22 & 23 *Car. 2. c. 11.*, be preferably entitled to be admitted into Greenwich Hospital.

## II. OF RECAPTORS FROM —

11. By 6 *Geo. 4. c. 49. s. 3.* if any ship, goods, &c., found or taken in the possession of pirates shall be duly proved and adjudged by any Court of Admiralty or other competent Court to have belonged to any of his Majesty's subjects, the same shall, by the decree of the Court, be restored to the former owners, they paying in lieu of salvage a sum equal to one-eighth of the value thereof, which money shall be distributed among such persons and in such proportions as his Majesty shall, by Order in Council or Proclamation, direct, for the distribution of the produce of any such piratical ship or goods.

12. Recaptors from pirates have a lien on the property for salvage, and are entitled to a reward. One-eighth might be a proper award to them. The remaining seven-eighths, if unclaimed, would belong to her Majesty, in her office of Admiralty, as *bona vacantia*. *The Marianna, Dos Santos*, 3 *Hagg.* 208.

13. The general principle of the Navy is strongly recognised of holding a strict unity and identity between the several classes of seamen composing a ship's company, even in head-money or bounty. *Two Piratical Gunboats*, 2 *Hagg.* 408.

## III. BONA PIRATARUM.

1. *Of the jurisdiction of the High Court of Admiralty as to — \**

14. The Court of Admiralty has authority to entertain a civil suit (under the title of "*causa spoli civilis et maritima*") for the restitution of goods piratically taken on the high seas. *The Hercules, Chitty*, 2 Dodson, 369. By piracy in reference to the origin of this tort is meant piracy as understood in the general law, and as consisting in an unwarrantable violation of property committed on the high seas. *Ibid.*

15. It is not necessary, to maintain this suit, that there should have been a previous conviction for piracy. Nor, whether there has been such conviction or not, is the civil suit for restitution merged in the act of piracy as a crime. The Common Law doctrine of mergers extends to felonies and crimes higher than felonies, but not to misdemeanours or other offences differently qualified. Nor could the Common Law doctrine of merger be extended to a crime belonging to and defined by another system of jurisprudence, and where reasons of legal policy and convenience rather appear to oppose its introduction, for though the law may very justly and commodiously apply its own peculiar principles to its subjects in their ordinary transactions governed immediately by its own rulers, and may therefore compel such individuals to give up *pro bono publico* their own private claim of indemnification for any wrong suffered, it by no means follows that where the wrong done is *contra jus gentium* and the foreign sufferer, standing upon that law, requires reparation, the Common Law of England would impose upon him the burthen of sacrificing his private rights, so founded, to the duty of protecting the interests of the country of the offender by confining the whole of his remedy to the useless privilege of a criminal prosecution. *Ibid.*

\* 5. If goods are taken piratically at sea, though sold afterwards at land, the Court of Admiralty has cognisance thereof, and may award restitution to the original owner, as well against the original spoliator as against the purchaser; and even without a previous conviction of the piracy, the original owner may proceed in a suit for restitution. 2 *Chitty's Gen. Prac.* 517., and see *Egglefield's case*, 1 Vent. 173., 2 Keb. 828.; *Pelaye's case*, Bulst. 327., 4 Inst. 152.; *Rex v. Marsh*, 3 Bulst. 27.

6. In case of an illegal taking of a ship or goods at sea or abroad, a British subject or a foreigner

16. The Court of Admiralty has jurisdiction over goods taken *piraticè* and sold afterwards at land, upon the principle that piracy does not convert property. *Ibid.* 372.

17. Warrants decreed against the proceeds of cargo of a foreign ship piratically seized on the high seas. *The Hercules, note to The Helen, Cornish*, 1 Hagg. 143.

2. *Of the right to —*(a) *Of former owners.*

18. By 6 *Geo. 4. c. 49. s. 3.* if any ship, goods, &c. found or taken in the possession of pirates, shall be duly proved and adjudged by any Court of Admiralty, or other competent Court, to have belonged to any of his Majesty's subjects, the same shall, by decree of the Court, be restored to the former owners, on payment of one-eighth of the value thereof in lieu of salvage.

19. Owners may claim their property piratically seized, but not the proceeds of sale thereof, which go to the Crown. *The Helen, Cornish*, 1 Hagg. 143.

20. The proceeds of sale of a cargo piratically seized, and afterwards condemned as a droit of Admiralty, granted to the original owners upon a memorial to the Crown, the expenses having been first deducted. *Ibid.* 142.

21. In piracy as well as felony the taking away the goods cannot alter the title therein, nor can lapse of time convert the ownership, which remains in the original owner as if no such forcible abduction had ever taken place. *The Panda*, 1 W. Rob. 433.

(b) *Of the Lord High Admiral.†*

22. Where the Lord Admiral proceeds *pro interesse suo* upon his royal grant of *bona piratarum*, i.e. the goods of pirates, not of others unlawfully taken on the seas by them, he must show that the party has

may, on application to the Court of Admiralty, upon attestations, move for and obtain a warrant of arrest of the property in a cause of piracy civil and maritime, or of its proceeds in a cause of spoliation civil and maritime. 2 *Chitty's Gen. Prac.* 517.

† 7. The grant to the Lord High Admiral of *bona piratarum* must be construed to be of the proper goods of the pirates themselves, and not of those which the pirates stole from other men, to which the owners are entitled. *Roll. Rep.* 285. pl. 1., 6 *Vin. Abr.* 526.



been attainted of piracy. *The Hercules, Chitty*, 2 Dodson, 373.

23. It is essential to the validity of the Lord High Admiral's claim to *bona piratarum* that the persons charged as being pirates should have been convicted, or where this is impossible, as in the case of the total destruction or escape of all the pirates, that there should be a judicial declaration that the property captured was the property of pirates. Such a demand of law is satisfied by the fact of pirates having been convicted in a Court of the United States, which is tantamount to a conviction in a Criminal Court of this country, as the Courts in both countries are equally Courts of Nations. *The Panda*, 1 W. Rob. 437.

24. The goods of pirates go to the Crown as droits of Admiralty. *The Helen, Cornish*, 1 Hagg. 144.

25. The proceeds of sale of a cargo piratically seized condemned as droits of Admiralty, and an application of the original owners for the same refused. Decision affirmed on appeal. *Ibid.* 142.

26. *Bona piratarum*, i.e. goods or property strictly belonging to pirates, are droits of Admiralty, to which the Lord High Admiral is entitled, but goods or property found in their possession are not droits, and the Admiral is not therefore entitled thereto. Certain dollars taken from pirates and unclaimed, *Held*, under the circumstances, to be *bona piratarum* and condemned as droits. An application for a monition against all persons having interest to show cause why they should not be condemned to her Majesty *jure coronæ*, refused. *The Panda*, 1 W. Rob. 423. 435.

*See ante*, No. 12.

#### IV. BOUNTIES ON CAPTURES OF PIRATES OR PIRATICAL VESSELS.

##### 1. Under 6 Geo. 4. c. 49., and the construction thereof.\*

27. By 6 Geo. 4. c. 49. s. 1. there shall be paid by the treasurer of the Navy to the officers and crew and others on board her Majesty's ships or hired armed ships at the actual taking, sinking, or otherwise destroying any piratical ship or boat 20*l.* for each pirate taken, secured, or killed during the attack on such vessel, and 5*l.* for each pirate not taken or killed, who

shall have been alive on board such piratical vessel at the commencement of the attack; the numbers to be proved by the ship's papers, verified by the oaths of two or more of the persons finding the same, or by such other evidence as the Judge of the High Court of Admiralty or any other Court authorized to take cognisance of such matter shall, under the circumstances of the case, deem sufficient proof thereof.

28. The 6 Geo. 4. c. 49. comprehends all acts of piracy by whomsoever committed, and it is not necessary in order to found a claim for the bounties given by the statute that the persons should carry on piracy as a regular occupation, but her Majesty's vessels are entitled to such rewards when they happen to have engaged with any persons whatsoever making any piratical attacks. *Serhassan Pirates*, 9 Jur. 143., 3 Notes of Cases, 591.

##### 2. Where held due — et contra.

29. Bounties held to be due under 6 Geo. 4. c. 49. for destruction of pirates where the actions were on land, *Piratical Proahs*, 3 Hagg. 426.

30. On destruction of piratical gunboats motion for bounties under 6 Geo. 4. c. 49. granted, and bounties decreed accordingly. *Ibid.*

31. A detachment from one of her Majesty's ships having been sent in her boats in search of pirates on the coast of Borneo, discovered six prahus manned by 120 men, the piratical character of which being doubted at the time, a flag of truce was hung out and other means taken to ascertain their real character, notwithstanding which, and without any provocation, the prahus opened an attack on the boats and an engagement ensued, when fifty-five were killed or made prisoners, and the remaining sixty-five made their escape. Preparations had been made on shore to cut off the detachment in case they should land, *Held*, under the circumstances, that the bounties conferred by the statute were due, and the same pronounced for accordingly; but the Court stated that the case was not to be drawn into precedent where a different set of circumstances should occur, as in those seas there is every kind of distinction between persons who carry on the occupation of pirates. *The Serhassan*

\* This act is printed in the Appendix.

*Pirates*, 9 Jur. 143., 2 W. Rob. 354., 3 Notes of Cases, 591.

32. An attack was made upon three piratical junks having a complement of 111 men, in which engagement 52 men were killed and the rest swam ashore, with respect to which latter, information was afterwards received that the greater part had been destroyed by the inhabitants on their making the shore. Motion to decree bounties to be due as for the capture of 100 men under 6 Geo. 4. c. 69. granted as to the 52 men taken in action, as to whom 20*l.* a-head was awarded, but rejected as to the remaining 48 men, the Court holding that the act must be construed to confer the bounties on those persons only who had taken, secured, or killed the pirates. *Piratical vessel (name unknown)*, 1 W. Rob. 461.

### 3. Of the payment and distribution of —

33. The 6 Geo. 4. c. 49. provides in s. 2. for the speedy payment of the bounties by that act conferred on the capture and destruction of pirates, and directs the same to be paid to the duly authorized agents for the sale of such piratical ships or for the receipt of such bounties, in case such ships shall have been destroyed in like manner as is by 45 Geo. 3. c. 72. directed with respect to the appointment of agents for sale of prizes, and that such bounty shall be distributed by such agent amongst such persons, and in such manner and proportions, as his Majesty shall by Order in Council for that purpose direct.\*

### See PRIZE AGENTS.

34. By 6 Geo. 4. c. 49. s. 4. no person

deserting from her Majesty's service shall be entitled to any share of bounty, salvage, or other monies payable under this act, but such and all other unclaimed shares shall be paid to Greenwich Hospital as by 45 Geo. 3. c. 72. is directed with regard to such shares of prize-money.

35. Bounties for the capture of pirates under 6 Geo. 4. c. 49. made by boats detached from a King's ship at a distance of some miles from the ship, out of sight but not of signal distance, *Held* to be distributable among the whole ship's company, and not the boat's crews exclusively. *Two Piratical Gunboats*, 2 Hagg. 407.

### V. MISCELLANEA.†

36. With pirates there is no state of peace. They are the enemies of every country, and are therefore universally subject to the extreme rights of war. *Le Louis, Forest*, 2 Dodson, 244.

37. The name "pirate" does not attach only to those on the sea. *Serhassan Pirates*, 9 Jur. 143., 3 Notes of Cases, 591.

38. By 5 Geo. 4. c. 113. s. 10. dealing in slaves on the high seas shall be deemed piracy.

39. By 8 Geo. 1. c. 24. s. 2. ships fitted out to trade with pirates, with the goods on board the same, shall be forfeited, one half to the Crown and the other half to the informer, who may sue for such forfeiture in the High Court of Admiralty.‡

40. The African states having now acquired the character of established governments, and having regular treaties with this country, are not to be deemed pirates. *The Helen, Hislop*, 4 C. Rob. 3.

\* 8. By the 54 Geo. 3. c. 93. s. 1., such and so many of the clauses and provisions in the 45 Geo. 3. c. 72. contained as relate to prize agents and Greenwich Hospital are, with parts of other acts, repealed. It is questionable whether the legislature did not mean to refer in the 6 Geo. 4. c. 49. to the 54 Geo. 3. c. 93., instead of to the 45 Geo. 3. c. 72.

9. The section of the 45 Geo. 3. c. 72. referred to in the 6 Geo. 4. c. 49. seems to be the 53d, and not sec. 5. & 6. as stated in the marginal reference.

10. The 53d sect. of the 45 Geo. 3. c. 72. is the same as the 13th sect. of the 54 Geo. 3. c. 93., which see, under title PRIZE AGENT.

11. The 54th sect. of the 45 Geo. 3. c. 72., direct-

ing the registration by agents of their letters of attorney, and imposing penalties on default thereof, which are by 6 Geo. 4. c. 49. extended to that act, is the same as the 14th sect. of the 54 Geo. 3. c. 93., which see, under title PRIZE AGENT.

† 12. As to the validity of the purchase of a ship from pirates *bonâ fide* and in ignorance of her piratical character, and of the purchase of ships or goods generally from such parties, see *Introduction to Godolphin's Adm. Jur.*

‡ 13. If the master of a ship and the mariners commit piracy, without the knowledge or assent of the owner, the ship shall be forfeited by the Admiral Law, of which the Common Law takes cognisance. 1 Rol. 530. l. 25., 1 Com. Dig. 272.

## PLEADINGS.

## I. GENERAL RULES AND PRINCIPLES AS TO —

## II. OF RESPONSIVE PLEAS.

## III. OF PLEADINGS AFTER PUBLICATION OF THE EVIDENCE IN THE CAUSE.

1. *Generally.*2. *Documents and facts noviter perventa.*

## IV. OF PLEADINGS ON APPEAL.

## V. WHAT MATTERS ARE PLEADABLE — ET CONTRA.

## VI. DOCUMENTARY EVIDENCE, HOW TO BE PLEADED.

## VII. OF OBJECTIONS TO —

1. *In proceedings by act on petition.*

## VIII. IN CAUSES OF BOTTOMRY — see BOTTOMRY.

## IX. IN CAUSES OF POSSESSION — see POSSESSION.

## X. OF THE ALLOWANCE OF COSTS OF PLEAS NOT ADMITTED — see COSTS.

## See AFFIDAVITS, ALLEGATIONS, EVIDENCE, PRACTICE.

## I. GENERAL RULES AND PRINCIPLES AS TO — \*

1. The practice of the Court requires that all the essential particulars of the defence should be set forth in the pleadings in the first instance; and *semble*, the Court will not sanction the attempt to supply such omissions in the plea by importing them into the affidavits. *The Virgil, Wilson*, 2 W. Rob. 204.; *The Speed, Ellis*, *Ibid.* 227.

2. In proceedings by act on petition, the plaintiff should state his whole case in the act, and the answer of the defendant thereto should contain all the grounds of his defence, and also any blame he may think imputable to the adverse party. This practice is of the utmost importance, as otherwise charges may be set up at the hearing to which it would then be too late to offer a defence which might otherwise have been available. The Court will reject affidavits at variance with or extraneous to the statements in the pleadings. *The Ebenezer*, 7 Jur. 1117.

3. The whole substantive case of a party should be at once brought before the Court, but where it is clearly shown that the facts could not have been sooner pleaded, additional articles may be given in; but it must clearly appear to the Court that they could not have been given in before. • *Moorsom v. Moorsom*, 3 Hagg. (Eccl.) 97.

4. It is not possible to set forth in the act every minute circumstance to which the witnesses can depose, and it would be mischievous to do so, for there could then be none of those corroborating facts of the original statement which so materially tend to elucidate the truth. The fact of a

pilot having been put on board another ship at the same time that a vessel salvaged was asserted to have been attempted to be boarded by a pilot but without success, (a circumstance not stated in the act, but put forward in the proofs), *held* to be admissible evidence, as supporting the general statement in the act, that a pilot could have been put on board with ease and facility. *The Towan*, 8 Jur. 222.

5. The facts allowed to be stated must be plain and simple, and not such as would probably run into intricacy of discussion or ambiguity; and it is a general rule that whenever specification is introduced it should be so exact as to give the party full opportunity of defence. *Evans v. Evans*, 1 Hagg. (Cons.) 96.

6. Where fraud is charged the Court allows a greater latitude of pleading than in ordinary cases, but even then remote facts must not be as minutely stated as those that bear directly on the point at issue. *Marsh v. Tyrrell & Harding*, 1 Hagg. (Eccl.) 133.

7. The party intending to take the benefit of the 6 Geo. 4. c. 125. (exempting owners from responsibility for damage done while in charge and through the default of a duly licensed pilot) should state such intentions in the pleadings, but the omission to do so will not deprive him of the exemption from responsibility conferred by the statute; the act being a public act the Court is bound to take notice of it without its being specially pleaded. *The Canadian, Dixon*, 1 W. Rob. 343.

## II. OF RESPONSIVE PLEAS.

## 8. It may be laid down as a general rule,

\* 1. *Semble*, that in pleading an *alibi*, a bare averment that the party was in a different place is not sufficient. It should be shown where the party

really was, and how it happened that he could not be at the place asserted. *Keating v. Brooks and Others*, January, 1845, (Prerogative, not reported.)

that whatever is pleaded in the nature of a reply must be either in contradiction of what is alleged in the answer or explanatory of averments in the defence, or else necessary to corroborate the original statements in the cause. *The Anne and Jane, Boyce*, 2 W. Rob. 104.

9. New matter, of a separate and distinct character from what is alleged in the answer to an act on petition, ought not to be pleaded in a rejoinder, unless the same has come to the knowledge of the party pleading it since the original answer was given in; but matter subsidiary to the defence contained in the answer may be stated in a rejoinder when the reply to the answer takes issue on the matter of defence there stated. *The Hebe, Hampton*, Ibid. 146.

10. In a rejoinder the matter pleaded must be confined to averments which are responsive to the facts suggested in the reply or corroborative of the original statement. It is not competent to introduce entirely new matter. Rejoinder of appellants in an appeal from award of magistrates, setting forth entirely new matter, rejected. *The Aurora, Clark*, 1 W. Rob. 325.

11. In a rejoinder to or upon a responsive allegation, the only facts strictly pleadable are those either contradictory to, or in explanation of, facts pleaded in the allegation to or upon which it rejoins, and those *noviter perventa* to the proponent's knowledge, though the Court may, in its discretion, under certain circumstances, permit facts to be pleaded which come under none of those descriptions. *Dew v. Clarke*, 2 Add. 102.

12. The principle of pleading by act on petition requires that every important matter which is intended to be denied should be expressly negatived; and in conformity with this principle, when a fact is averred and there is no contradiction of that fact, the Court will *prima facie* assume such an averment to be true. *The Glasgow Packet, Nicoll*, 2 W. Rob. 308., 8 Jur. 675.; *The Armadillo, Benedict*, 1 W. Rob. 257.

13. A defensive allegation by the owners responsive to the summary petition of the mariner should be limited to matters contradictory of, and responsive to, the summary petition, and not be a replender of it. *The Test, Brown* (2), 3 Hagg. 312.

### III. OF PLEADINGS AFTER PUBLICATION OF THE EVIDENCE IN THE CAUSE.

#### 1. Generally.

14. It is a principle of all Courts whose

proceedings are regulated by the civil law, that all facts shall be pleaded and proved before the depositions of the witnesses are seen, from the danger which might arise from the fabrication of evidence to meet the facts of the case. *Verelst v. Verelst*, 2 Phill. 146.

15. No party, whether such originally or a mere intervenor in a cause, can of right plead in the principal cause after publication. But the Court may still, if prayed, permit, *ex gratia*, a party so to plead on cause shown. Facts set forth in an affidavit in order to found a prayer to that effect on the part of an intervenor held insufficient to sustain the prayer; but the party so praying permitted, under the circumstances, to cross-examine the witnesses on the other side (after publication), on first giving security for the payment of costs, if finally awarded against him. *Clement v. Rhodes and Others*, 3 Add. 37.

16. After publication, a party is at liberty to plead specific facts contradictory to the testimony of witnesses, which facts, owing to the generality of the adverse plea, he could not have counter-pleaded before. *Halford v. Halford*, 3 Phill. 99.

17. If a material fact in the case have been pleaded without such specification as would enable the party to apply his defence to it by way of counter-plea, and he is therefore in some degree taken by surprise as to such particulars stated in the depositions of the witnesses, it is in the discretion of the Court, under great caution, to allow him to give in a defensive plea after publication. But it would relax the rules of evidence in a way liable to abuse and open perjury if that fundamental rule were permitted to be departed from, and, after publication of the evidence, on a plea laid with sufficient specification, the matter were suffered to be the subject of re-examination merely because the witness had deposed circumstantially, and so as to be capable of being contradicted on some incidental points, since there could hardly ever be a cause in which some of the witnesses would not disagree with others on trifling circumstances. *Evans v. Evans*, 1 Hagg. (Cons.) 101.

18. At the hearing of a cause, it appeared that a report, which had been pleaded as only verbally made, of the result of an investigation, had been made in writing, the Court thereupon, the adverse party not opposing, rescinded the conclusion of the cause in order to the document being properly pleaded, which having been done, publication passed a second time. An alle-

gation offered by the adverse party, pleading certain facts connected with the report, rejected by the Court on the ground that it contained matter pleadable at an earlier stage of the cause, the necessity for such plea not being affected by the fact of the report being verbal or in writing, and that the plea had not been asserted before publication had passed a second time. *Philips v. Philips*, 3 Curteis, 796.

## 2. Documents and facts noviter perventa.

19. Facts *noviter perventa* are pleadable after publication, by special leave of the Court. *Clement v. Rhodes and Others*, 3 Add. 41.; *Middleton v. Middleton*, 2 Hagg. (Eccl.) 140, supplement.

20. Facts *noviter perventa* are, except under circumstances very extraordinary, the sole facts pleadable after publication, and those only by special leave of the Court. *Clement v. Rhodes*, 3 Add. 41.

21. When the Court is prayed to rescind the conclusion of a cause in order to fresh matter being pleaded, it always requires to be satisfied that the party praying it is in no laches, and that the measure prayed is one essential to the ends of justice. It always further requires that some special ground be laid (as that such matter has newly come to the party's knowledge, or as the case may be) to found the prayer. *Durant v. Durant*, 2 Add. 267.

22. Exhibits may be pleaded as *noviter perventa* after publication, on an affidavit that the depositions had not been seen, and that the matter was *noviter perventa*. *Jones v. Jones*, 1 Hagg. (Eccl.) 254.

And see *antè*, No. 11.

## IV. OF PLEADINGS ON APPEAL.\*

23. On an appeal from a definitive sentence, the Court rejected an allegation pleading facts not shown to be *noviter perventa*. *Fletcher v. Le Breton*, 3 Hagg. (Eccl.) 365.

24. On appeals from definitive sentences, matters which could have been pleaded below, and which directly contradict the plea on which witnesses have been examined below, are not admissible; but matters more generally responsive may with caution be received, especially where the cause has not been properly conducted

in the Court below. See note to *Price v. Clark & Pugh*, Ibid. 265.

From awards of Commissioners and Magistrates, see SALVAGE (civil) cap. XVII. sec. 2.

## V. WHAT MATTERS ARE PLEADABLE — ET CONTRA.

25. An allegation in a suit of personal damage, pleading matters of a criminal nature, directed to be reformed by the omission of such matters as not proper to be introduced in a civil proceeding. *The Ruckers, Carey*, 4 C. Rob. 76.

26. In a case of asserted joint recapture, articles of an allegation pleading certain affidavits of parties on board the recaptured ship rejected as inadmissible in a case of plea and proof. *The Urania, Walker*, 5 C. Rob. 148.

27. In a cause of damage, in which the proceedings were by plea and proof, objections to certain parts of a responsive allegation, viz. 1st, the history in general terms of the ship proceeded against for some days prior to the collision; 2d, statements made by the mate and seamen of the ship proceeding, with respect to the state of their vessel, &c.; 3d, the age of such ship; 4th, variations between the accounts given in the protest and libel; and, 5th, delay in instituting proceedings. Held, 1st, that such previous history of the ship was admissible, as being usual and convenient; 2d, that such only of the statements as formed part of the *res gesta* were admissible; 3d, that the age of the ship might be pleaded to, account for her loss; 4th, that inasmuch as the protest itself was to be brought in, the statements contained in it need not be pleaded; and, 5th, that the delay appearing on the face of the proceedings, and not being accounted for in the libel, it was not necessary to allege it in the responsive allegation. *The Mellona*, 10 Jur. 993.

28. Felonious acts, on what principles admitted, and under what limitation allowed to be pleaded in the Ecclesiastical Courts. See *Nash v. Nash*, 1 Hagg. (Eccl.) 140.

29. Minute facts should not be pleaded, but properly come out in evidence. *D'Aquilar v. D'Aquilar*, Ibid. 776.

30. An allegation pleading a verdict in

\* 2. If there be a sentence in the Admiralty upon default after public notice, the party upon the appeal may exhibit new allegations, and dis-

prove the ground of the sentence. *Carth.* 476., 1 *Com. Dig.* 279.

ejection, and the remarks of the Judge thereon, and the names of the witnesses examined, rejected. *Grindell v. Grindell*, 3 Hagg. (Eccl.) 259.

#### VI. DOCUMENTARY EVIDENCE, HOW TO BE PLEADED.

31. Deeds should not be annexed to an allegation, but be deposited in the registry, and the material parts only recited in the plea. *Mynn v. Robinson and Others*, 1 Hagg. (Eccl.) 69.

32. On admission of an article in an allegation pleading an extract from a bill of costs, the bill itself was directed to be brought in, although it was alleged, that the bill contained nothing else relative to the matter at issue in the cause. *Bullin v. Barry*, 1 Curteis, 631.

33. A party cannot plead the contents of an instrument unless it is destroyed or in possession of the adverse party. *Morse v. Morse*, 2 Hagg. (Eccl.) 608.

34. The contents of or extracts from written documents must not be pleaded without annexing the same; and even if the adverse counsel do not object to the non-annexation, the Court must take the objection. *Neeld v. Neeld*, 4 Hagg. (Eccl.) 272.

35. Where a letter is pleaded to be in the possession of the adverse party, the contents may be set forth at length, leaving the other party, if he please, to produce the letter. *Croft v. Croft*, 3 Hagg. (Eccl.) 317.

36. The mariner's contract having been brought in and not contradicted, it is un-

necessary, in a defensive plea of the owners, to plead the execution thereof. *The Test, Brown* (2), Ibid. 312.

#### VII. OF OBJECTIONS TO—

##### 1. In proceedings by act on petition.

37. In proceedings by act on petition it is competent to either party, whether plaintiff or defendant, to raise objections to the adverse pleadings; but such objections are not to be raised on ordinary occasions or on slight grounds. *The Anne and Jane, Boyce*, 2 W. Rob. 98.

38. Objections to pleading may be taken to any one of the component parts of an act on petition; but such objections are not to be taken without substantial reasons to support them. *The Hebe, Hampton*, Ibid. 146.

39. Objections to a rejoinder, in a case of damage, on the ground of its pleading irrelevant matter and circumstances which should have been stated in the original act, overruled under the circumstances of the case and the parties proceeding being foreigners, though the Court admitted the irrelevancy and superfluity of some of the circumstances pleaded. *The Anne and Jane, Boyce*, Ibid. 98.

40. Objection to the admission of a rejoinder in a cause of bottomry, on the ground of its containing new and irrelevant matter, and that the party opposing it would have to send to New South Wales for particulars to enable him to answer it, overruled, the Court holding the matters pleaded to be relevant and called for by the reply. *The Hebe, Hampton*, Ibid. 146.

### POSSESSION.

#### I. GENERAL PRINCIPLES AS TO CAUSES OF—

#### II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF—

1. Generally.
2. Under 3 & 4 Vict. c. 65. s. 4.
3. Prior to 3 & 4 Vict. c. 65.
4. Between foreigners.

#### III. OF THE JURISDICTION OF VICE-ADMIRALTY COURTS IN CAUSES OF—

#### IV. CAUSES OF—

1. Against master and part-owner.

#### 2. Against moiety interest.

#### 3. Against purchasers from the master or agent abroad.

#### 4. Other cases.

#### V. PLEADINGS IN CAUSES OF—

#### VI. BAIL IN CAUSES OF—

#### VII. COSTS IN CAUSES OF—

#### VIII. PRACTICE IN CAUSES OF—

#### IX. ATTACHMENT TO ENFORCE—

See TITLE.

#### I. GENERAL PRINCIPLES AS TO CAUSES OF—

1. The party holding the bill of sale has the legal title, and is entitled to the pos-

session against the asserted equitable interest in others. Sentence accordingly in a cause of possession. *The Sisters*, 5 C. Rob. 155.

2. It is not necessary in the first in-

stance to examine the title of a person in actual *bona fide* possession and ownership of a vessel until it is impeached. A party proceeding to disturb possession must succeed by the strength of his own title. *The John, Hone*, 2 Hagg. 308.

3. Possession of a ship, under a transfer void for non-compliance with the Register Acts, is a sufficient title in trover against a stranger for parts of the ship being wrecked. *Sutton v. Buck*, 2 Taunt. 302.

4. The Court of Admiralty can never proceed to change the possession of a vessel, except on the application of the majority of those having the legal interest in the ship; and the Court can only look to the legal title, not to any beneficial or equitable interest, such as that of legatees, &c. An administratrix (with will annexed), of a deceased shareholder, cannot represent him, such shares being by his will given to trustees, who are therefore possessed of the legal interest, subject to a claim of the administratrix to have the shares sold for payment of debts. *The Valiant, Griffiths*, 1 W. Rob. 67.

5. In a cause of possession the Court will not, at the hearing, listen to the suggestion that certain of the owners had not authorized the proceedings taken on their behalf, the defendant's remedy being to call for a proxy in an early stage of the cause. *The New Draper, Walker*, 4 C. Rob. 290.

6. In causes of possession it is to be presumed that all those shareholders who do not apply are satisfied that the possession of the vessel should not be altered. *The Valiant, Griffiths*, 1 W. Rob. 67.

7. In a cause of possession, *Held*, that the interest of a shareholder who died since the commencement of the proceedings, and whose personal representative had not given the proctor any authority to proceed in the cause, is to be deducted from the estimate of the *quantum* of interest claiming a transfer of possession. *Ibid.*

8. The possession of one owner is the possession of all. *Ex parte Machel*, 1 Rose, 447., 2 V. & B. 216.

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CAUSES OF—

### 1. Generally.

9. *Semble*, That a cause of possession, if it involve the sentence of a foreign Court of Admiralty, cannot be entertained, *The*

*Martin of Norfolk, McCrohan*, 4 C. Rob. 293.

10. The Court of Admiralty has power to inquire into title in cases in which British subjects lay claim to a ship coming to this country in the possession and as the property of foreigners. *The Experimento Garcia*, 2 Dodson, 38. 42.

### 2. Under 3 & 4 Vict. c. 65. s. 4.

11. By 3 & 4 Vict. c. 65. s. 4. the High Court of Admiralty shall have jurisdiction to decide all questions of title to or ownership of any ship or vessel, or proceeds thereof, in the registry arising in any cause of possession, &c.

### 3. Prior to 3 & 4 Vict. c. 65.

12. The High Court of Admiralty does not entertain suits of possession, unless where there is a clear constat of property, where the only question is to dispossess the master under the act of a majority of interests in the ship. *The Aurora, Thompson*, 3 C. Rob. 133.

13. But it was formerly *held*, for a very long time, to be within the jurisdiction of the Court to examine and pronounce for the title of ships on questions of ownership. It was not till some time after the Restoration that it was informed by other Courts that it belonged exclusively to them. Since that time the Court has been very cautious not to interfere at all in questions of title. *Ibid.*

14. Where the consideration of the question of title arises incidentally and in such a manner as is not disputed between the parties, the Court can hardly be said to judge on the matter of title as being a matter of question. *Ibid.*

15. The Court of Admiralty, in suits of possession, is not merely ministerial to decree possession on the bare *legal* title, under possession of the bill of sale in opposition to the equity of the case. *The Sisters, Stokes*, 4 C. Rob. 275.

16. The Court of Admiralty has jurisdiction in causes of possession, but is not permitted to entertain questions of disputed title, except so far as may be necessary for the purpose of determining the question of possession. In such cases, where the title set up is such as to raise a substantial doubt to whom the property belongs, the Court will not interfere as to the possession until the title shall have been determined in the proper Courts.

*Aliter*, where a mere cobweb title is set up. *The Warrior, Peache*, 2 Dodson, 288.

17. The Court of Admiralty is in the habit of transferring possession from the actual holder, sometimes by its own movement, and sometimes at the instance of other Courts having no direct power for that purpose; but it is bound to consider itself as moving within very narrow limits, if it proceed at all originally, upon a question of title. It would not be inclined in any case to transfer possession without regarding the title of the party claiming the transfer. It must be satisfied that he is *potior jure*. *The Pitt, Crosse*, 1 Hagg. 243.

18. Where the possession is gained by force and violence, or by a fraud manifest on the face of the transaction, or where the party in possession is avowedly entitled only as a minor owner in opposition to the majority of interests, the Court will feel no hesitation in transferring possession. *Ibid.*

19. It must be in cases extremely simple that the Court will decree possession on a merely preferable title to be reached by its own judgment; but where a course of transactions involving fraud is objected, it will decline entering into the question, and leave it to be determined by the inquiry of Courts having ampler jurisdiction. *Ibid.*

20. The Court of Admiralty has jurisdiction, in a cause of possession, to take a ship from a wrong-doer, and deliver her over to a person claiming as the right owner. *In re Blanchard*, 2 B. & C. 244.; *S. C. nom. Baxter v. Blanshard*, 3 D. & R. 177., *Smith's Merc. Law*, 175., *Abb. Sh.* 103.

21. Therefore a prohibition will not lie to restrain that Court from proceeding in such a cause. *Ibid.*

*See post*, Nos. 28. 34. 45. 46.

#### 4. Between foreigners.

22. The Court of Admiralty will not interfere in the disputes of foreigners, particularly in a case of possession, without the consent of both parties, and an application for that purpose from the foreign minister; and even then it does so with reluctance, and merely to prevent further inconvenience and loss by resort to the decisions of other courts in other countries. *The Martin of Norfolk, M' Crohan*, 4 C. Rob. 297.

23. In a cause of possession between foreigners, entertained at the request of the parties and of the consul of their country, the Court declined to investigate a decision

of a foreign Court of Admiralty, under which the present possessor claimed, and dismissed the parties. *Ibid.* 293.

24. The Court of Admiralty will not entertain a cause of possession of a foreign ship between foreigners even with the consent of the parties and of the accredited agent resident here of the country to which they belong, as not being a case arising on the *jus gentium*, the municipal regulations of different countries having modified and altered the general rule under the old civil law. Such a suit dismissed accordingly. *The Johan and Siegmund, Niegel*, Edwards, 242.

25. It is with the greatest reluctance that the Court entertains causes of possession where foreigners are alone concerned, as being questions not properly belonging to the *jus gentium*, but depending on the municipal regulations of different countries with which the Court can be but imperfectly acquainted. *The See Reuter, Lange*, 1 Dodson, 23.

26. It is the practice of the Court not to entertain causes of possession between foreigners unless the cases have been referred to its decision by the consent of parties, or by the intervention of the representative of the foreign state devolving the jurisdiction of his own country 'on the Court. *Ibid.* 24.

27. In a cause of possession between foreigners, an official decree, duly authenticated, of the authorities of their country, decreeing possession of the ship to be given up by the master, one of the parties in the suit, to the agent of the principal owners, the other party *Held* sufficient to authorize the Court to interfere, and possession ordered in furtherance of such decree, on bail being given to answer the master's interest. *Ibid.*

### III. OF THE JURISDICTION OF VICE-ADMIRALTY COURTS IN CAUSES OF —

28. On appeal from the decision of a Vice-Admiralty Court in a cause of possession brought by A., an asserted owner, against B., another owner, and in which possession had been decreed to be transferred from B., in possession, to A., sentence reversed, on the ground that the Vice-Admiralty Court had not sufficient jurisdiction to change the possession, for that A.'s title, as being only a conditional assignment or mortgage of the vessel, not reduced into possession, though in absolute terms, was defective, and *à fortiori*, not a



clear and simple title, in which case only a Vice-Admiralty Court has jurisdiction to interfere to transfer possession; and that the Vice-Admiralty Court having nevertheless exercised the jurisdiction would not cure the failure of jurisdiction. Restitution to the former owner decreed accordingly, with demurrage, but without costs. *The John, Horn*, 2 Hagg. 305.

#### IV. CAUSES OF —

##### 1. *Against master and part-owner.\**

29. In the case of dispossessing a master who is not a part-owner, all that the Court requires is that the majority of owners should declare their disinclination to continue him in possession. *The New Draper, Walker*, 4 C. Rob. 287.

30. But in the case of a master who is also a part-owner, something more is required; some special reason for dispossessing him should be shown. In a cause of possession, the master, being also a part-owner, was dispossessed at the suit of a majority of the owners. *Ibid.*

31. In cases of ships belonging to British subjects, the Court has no hesitation in ordering possession to be delivered up on the application of a majority of owners, without entering very minutely into the causes of dissatisfaction between them and the master. *The See Reuter, Lange*, 1 Dodson, 23.

32. *Quere* as to the power of one part-owner of a ship to appoint a master and displace a master appointed by another part-owner. *Bowen v. Fox*, 5 M. & R. 5., 10 B. & C. 41., 4 Car. & P. 452.

##### 2. *Against moiety interest.*

33. In a cause of possession, motion, after the expiration of the fourth default, to decree possession to the executor of a moiety owner refused; but a monition against the parties having the remaining interest, to appear and show cause, granted. *The Egyptienne, Parkman*, 1 Hagg. 346. n.

34. The power of the Court of Admiralty to interpose for the purpose of altering the possession of a vessel is confined

to cases where the majority of interests is with the party invoking the Court's interference. Motion to change the possession at the petition of a moiety of the interest rejected. *The Elizabeth and Jane, Miller*, 1 W. Rob. 278.

##### 3. *Against purchasers from the master or agent abroad.*

35. On recapture of a neutral (American) ship from the enemy, restitution on salvage decreed to the former owners, and refused to a party claiming under an asserted purchase from the master in Ireland, but without prejudice to the rights of the purchaser to be prosecuted in the American Courts. Claim of the purchaser for amelioration refused. *The Fanny and Elmira, Hicks, Edwards*, 117. 120.

36. Possession of a ship which, being in a foreign port out of repair and the master being unable to raise money for such repairs, was ordered to be sold by the Vice-Admiralty Court of the place, and was afterwards sold by the agent of the owner for a larger sum than was offered on the attempted sale by the Vice-Admiralty Court, refused to be restored from the purchaser to the former owner on the ground that the transaction was not shown to be clearly fraudulent, though the master had bought a one-third share from the purchaser. *The Warrior, Peache*, 2 Dodson, 298.

37. In a cause of possession of a ship sold by the master in the West Indies, the Court declined to disturb the possession under the sale and to transfer it to the original owners. *The Pitt, Crosse*, 1 Hagg. 240.

38. Possession of a ship, time having been allowed for an appearance by the purchaser, decreed *in pœnam* to the former owners, on affidavits that the ship, having been abandoned by the master, was sold without their consent. *The Lagan, otherwise Mimax*, 3 Hagg. 418.

39. In a cause of possession promoted by the original owner against a purchaser under a sale by the master abroad, pos-

\* 1. In a cause of possession to remove the master, it is not competent to him to dispute the title of the registered owners and allege a title in other parties, but the Court will, on the application of the master alleging such a title, give further time for the appearance of an assignee of the sole owner. In such a suit, where the registered owners had purchased of the sole owner shortly

prior to his bankruptcy, the Court decreed possession to them, notwithstanding the allegations of the master that the sale was collusive and in fraud of the assignees, sufficient time having elapsed to afford an opportunity for the assignees to intervene without their having done so. *The Windsor Castle*, 1 Notes of Cases, 118.

session decreed (on motion) to the original owner, on giving bail to answer the other party's interest, and to cover freight, &c. while in his possession. Application of the purchaser to release the ship on bail refused. *The Partridge, Betham*, 1 Hagg. 81.

40. Where the master, in consequence of damage sustained on the voyage, of the ship becoming unseaworthy, and of no advances on loan or bottomry being obtainable to repair her, sold her to the plaintiffs, who repaired and sent her with a cargo to her registered port in England, but the owners refusing to ratify the sale, or consent to the registry of the ship in the plaintiff's names, put men on board to take possession of her and the cargo, the Court of Chancery, considering it a question of purely legal title, and the taking possession a mere trespass, refused to interfere by injunction to restrain the owners. *Held* also that if the plaintiffs had acquired no legal title by the purchase they had no lien in respect of the monies laid out by them in the repairs, nor could the bill of sale of the ship be treated in the nature of bottomry. The plaintiffs would, however, be entitled, on the case made out by the bill, to relief in respect of the bill of exchange given for the purchase-money, if they failed as to the legal title, and were entitled to have the legal right put in a course of determination, and be protected in the meantime. And *semble*, if injury or removal were threatened to the property, or if the plaintiffs had contracted engagements the fulfilment of which might be prevented by the conduct of the defendants, the Court might interfere by injunction. *Ridgway v. Roberts*, 4 Hare (V. Ch.), 106.

#### 4. Other cases.

41. On motion on behalf of the original owner for warrant of arrest of a British slave-ship, which, having been seized by the slaves, had been recaptured by an English frigate and carried to St. Domingo, where it was condemned and publicly sold under a decree of a pretended Court of Admiralty there, monition against the holder of the vessel to give bail, and against the recaptor, decreed. *The Thomas, McQuay*, 1 C. Rob. 322.

42. Where a vessel is captured and sold under an invalid sentence (as that of an incompetent tribunal), and then captured again from the purchaser, and again condemned by a regular tribunal, if it be a foreign ship the Court will not interfere to

decree restitution to the original foreign owner, inasmuch as that would involve the relation between foreign states. *The Cosmopolite, Mathieson*, 3 C. Rob. 333.

43. In a cause of possession, in the Instance Court, brought by the former British proprietor against the owner of a British prize ship, purchased from a neutral, who purchased from the enemy, on proof of capture and condemnation in the port of the enemy, the *onus* of proof of the illegality of condemnation lies on the former proprietor; but *aliter* where the vessel is captured and carried into a neutral port. On failure of such proof by the former proprietor, warrant superseded. *The Countess of Lauderdale*, 4 C. Rob. 283.

44. In a cause of possession at the suit of the former British owner of a vessel which had been captured by the French and carried into a port of Spain, then an ally of the French, where she was condemned by the Prize Tribunal at Paris, but was afterwards seized by Spain on becoming an enemy of France and sold; *Held*, on proof of such first sale, that the right of the former British owner was divested, and that the Spanish seizure was not in the nature of a recapture enuring to the benefit of the former British owner. *The Victoria, otherwise Alfred the Great*, Edwards, 97.

45. Application for a warrant of arrest in a cause of possession rejected, the title of property being disputed between the parties. *The Guardian, Beaton*, 3 C. Rob. 93.

46. Motion for warrant of arrest, at the instance of the mortgagee or purchaser, for the purpose of transferring possession of a ship, the interest in which was by deed vested in the purchaser absolutely in default of payment within a given time (then passed) of money advanced by him, rejected, the Court holding the case to be one of adverse title, and that the 6 Geo. 4. c. 110. did not increase the jurisdiction of the Court, or make ships more absolutely transferable by such conditional bills of sale, for the purposes of security than they were before. *The Fruit Preserver, Brown*, 2 Hagg. 181.

47. Application to change possession at the suit of an asserted majority of shareholders, some of whose interests, however, appeared on investigation to be beneficial merely, not legal, and therefore not cognisable by the Court, by which means the number of legal shareholders was reduced to a minority of interests, rejected with costs. *The Valiant, Griffiths*, 1 W. Rob. 67.

## V. PLEADINGS IN CAUSES OF —

48. In a cause of possession the allegation of the party proceeding, pleading the instrument of purchase and that he had never sold or transferred the possession, objected to on the ground that the manner in which the title was avowed was not sufficiently expressed, admitted to proof. *The Sisters, Tubbs*, 3 C. Rob. 213.

## VI. BAIL IN CAUSES OF —

49. In a cause of possession bail is taken as a substitute for the substance of the ship, but does not include a stipulation for any earnings that may be made. Application for bail to cover intermediate earnings refused. *The Peggy, Finlay*, 4 C. Rob. 304.

*See ante*, No. 39.

## VII. COSTS IN CAUSES OF —

50. There is no positive rule that a successful party in a cause of possession is entitled to costs. A question of costs depends on the merits of the case. *The Partridge, Betham*, 1 Hagg. 83.

51. Motion to decree costs in a cause of possession against the party proceeded against pursuant to an agreement entered into between the parties, "that the costs in the Court of Admiralty should abide the event of a trial at law (determined in favour of the applicant), if the rule in the Court of Admiralty is to give costs to a party succeeding in a cause of possession," rejected, and the parties dismissed without costs. *Ibid*.

52. In a cause of possession in which the Court refused to disturb the party in possession of the vessel, it directed the question of costs and demurrage to stand

over to abide the decision of a Court of Common Law upon the question of title. *The Pitt, Crosse*, 1 Hagg. 245.

## VIII. PRACTICE IN CAUSES OF —

53. The warrant of arrest calls upon all persons having interest to appear and show cause. The party in possession not having appeared, *Held* to have thereby acquiesced in being dispossessed and in the sale of the vessel under the decree of the Court. *The Neptune, Cumberlege*, 3 Hagg. 132.

54. Motion founded on an *ex parte* affidavit of the owners for monition against an agent to bring in the ship's papers belonging to a foreign vessel rejected, the case not being an original cause of possession, in which the Court would have the power to make an order for the production of the ship's papers as incidental to the cause. *The Lusitano, Dos Sanctos*, 1 W. Rob. 166.

## IX. ATTACHMENT TO ENFORCE —

55. In a cause of possession brought by the owners of 6-8th shares against the owners of the remaining 2-8th shares, which latter were the ship's-husbands and had the vessel in their dock for repair, possession having been decreed to the owners of the greater interest, and a ship-keeper put on board by them, motion for an attachment to enforce the due execution of the decree of possession, on the ground that the ship's-husbands refused to permit any person to enter their dock for the purpose of making the vessel water-tight or to repair her themselves, and had placed a large vessel before her so that she could not come out of dock, rejected. *The John of London, Ellick*, 1 Hagg. 342.

## PRACTICE.

- I. GENERAL PRINCIPLES AS TO, 300.  
 II. AS TO ENTRY OF ACTIONS, 301.  
 III. AS TO PROCESS, 301.  
 IV. AS TO DEFAULTS AND PRIMUM DECRETUM, 301.  
 V. AS TO BAIL, 302.  
 VI. AS TO APPEARANCE, 302.  
 VII. AS TO PROXIES, 302.  
 VIII. AS TO OBJECTIONS TO THE JURISDICTION OF THE COURT, 302.  
 IX. AS TO RELEASING SHIPS FROM ARREST, 303.  
 X. AS TO ENFORCING THE PRODUCTION OF PAPERS, 303.  
 XI. AS TO PLEADINGS, 303.  
 XII. AS TO ASSIGNATIONS, 304.  
 XIII. AS TO AFFIDAVITS, 304.  
 XIV. AS TO TERMS PROBATORY, 304.  
 XV. AS TO RESCINDING THE CONCLUSION OF THE CAUSE, 305.  
 XVI. AS TO POSTPONING HEARING, 305.  
 XVII. AS TO INVOCATION OF PROCEEDINGS, 305.  
 XVIII. AS TO ABATEMENT OF SUIT, 306.  
 XIX. AS TO ALTERATIONS OF THE DECREES OF THE COURT, 306.  
 XX. AS TO THE INSTITUTION OF A SECOND SUIT IN RESPECT OF THE SAME CAUSE OF ACTION, 306.  
 XXI. AS TO CONFERENCES FOR COMPROMISE, 306.  
 XXII. MISCELLANEA, 307.  
 XXIII. AS TO ANSWERS — see ANSWERS.  
 XXIV. AS TO APPEALS — see APPEALS.  
 XXV. IN CAUSES OF BOTTOMRY — see BOTTOMRY.  
 XXVI. AS TO COSTS — see COSTS.  
 XXVII. IN CAUSES OF DAMAGE — see DAMAGE.  
 XXVIII. AS TO EVIDENCE — see EVIDENCE.  
 XXIX. AS TO FREIGHT — see FREIGHT.  
 XXX. AS TO INTEREST — see INTEREST.  
 XXXI. AS TO INTERVENERS — see INTERVENERS.  
 XXXII. AS TO LIMITATION OF SUITS — see LIMITATIONS.  
 XXXIII. AS TO PAUPERS — see PAUPERS.  
 XXXIV. IN PRIZE PROCEEDINGS — see PRIZE.  
 XXXV. IN CAUSES OF SALVAGE — see SALVAGE (civil).  
 XXXVI. AS TO SECURITY FOR COSTS — see SECURITY FOR COSTS.  
 XXXVII. IN SLAVE SEIZURES — see SLAVE TRADE.  
 XXXVIII. AS TO TENDERS — see TENDERS.  
 XXXIX. AS TO TRINITY MASTERS — see TRINITY MASTERS.  
 XL. AS TO COMMISSIONS OF APPRAISEMENT AND SALE — see UNLIVERY AND APPRAISEMENT.  
 XLI. IN CAUSES OF MARINERS' WAGES — see WAGES.  
 XLII. AS TO WITNESSES — see WITNESSES.  
 See ADMIRALTY, CONTEMPT, REGISTRARS, REGISTRAR AND MERCHANTS.

## I. GENERAL PRINCIPLES AS TO —

1. If the old practice be consonant to reason and analogy and has undergone no authoritative alteration, it should continue to be the practice of the Court. *Durant v. Durant*, 1 Add. 118.

2. The utmost effect of a practice, not of long standing, by parties incapable of giving a legal decision would be to incline the judgment of the Court, in a case of extreme doubt only, in favour of the practice. *La Bellone, Duperre*, 2 Dodson, 348.

3. *Semble*, where the parties suing are foreigners the Court will be more indulgent in overlooking mere technical defects in the conduct of the proceedings than in the case of a British suitor. *The Anne and Jane, Boyce*, 2 W. Rob. 98.

4. By 3 & 4 Vict. c. 65. s. 18. the Judge of the Court of Admiralty is empowered to make rules of Court with reference to the practice and the duties of officers and practitioners therein, which rules, however, are not to take effect until approved of by the Queen in Council.

5. The law of the country where a contract is made or is to be performed furnishes the rules for expounding the nature and extent of its obligations, but the law of the country where it is sought to enforce performance of a contract governs all questions as to the remedy and mode of proceeding, including lapse of time. *Ferguson v. Fyffe*, 8 Clark & Fin. 121.; *Don v. Lippman*, 5 Clark & Fin. 1.

## II. AS TO ENTRY OF ACTIONS.

6. The Court disapproves of actions being entered in an amount disproportionate to any reasonable estimate of the service rendered. *The Graces*, 8 Jur. 501.

## III. AS TO PROCESS.\*

7. By Order of Court of 28th January, 1801, it is directed that no warrant of arrest, either of persons or ships, shall issue out of the Instance Court without an affidavit of debt being previously made by the person on whose behalf such warrant is prayed or his lawful attorney.

8. By order of Court of 27th April, 1831, it is directed that no warrant of arrest shall issue against any ship, goods, or person, without an affidavit being previously made and exhibited by or on behalf of the party applying, stating in general terms the nature of the demand against the ship, goods, or person, that compensation has not been received, and that the aid and process of the Court are required to enforce the same.

9. The Court on being applied to to issue a warrant to arrest a vessel in a cause in which the jurisdiction was uncertain, directed in lieu thereof a monition to issue against the agents and consignees, the owners being foreigners. *The Governor Raffles, King*, 2 Dodson, 17.

10. In cases of applications for the process of the Court against Crown authorities and the like, it is an important point to be considered by the Court in the first instance, how far it could enforce the execution of its process if it should be granted and resisted. *The Athol, Bellamy*, 1 W. Rob. 379.

11. When a monition issues against a person to do an act, the act required to be done must not only be lawful in itself but such as he has power and authority to do. *Millar and Symes v. Palmer and Kilby*, 1 Curteis, 545.

12. The warrant of arrest calls upon all persons who have an interest to appear and show cause. The party in possession not having appeared, and the vessel having been sold by the Court, the party was held to have acquiesced in being so dispossessed. *The Neptune, Cumberlege*, 3 Hagg. 132.

13. The warrant of arrest of a ship by the Admiralty and the process of citation is notice to all the world of the subsequent proceedings. *Attorney-General v. Norstedt*, (1816,) 3 Price, 109.

14. A party hoisted illegal colours at Whitehaven, which had been seized there, but he afterwards sailed with his ship to Ireland. A warrant to arrest him there in respect of the offence decreed to issue. *The King in his Office of Admiralty v. Miller*, 1 Hagg. 197.

15. In a cause of collision the owners of the vessel proceeded against being resident in Ireland, decree for their answers directed to issue in the usual form, and not by letters of request. *The Manchester, Macleod*, 1 W. Rob. 94.

16. The mode of initiating a suit by the arrest of a ship, "her tackle, apparel, and furniture," is the ancient formula of the Court, and such words, notwithstanding the narrowness of their terms, affect all the property of every kind belonging to the owners, as far as the general law limited by statute extends. *The Dundee, Holmes*, 1 Hagg. 124.

17. The warrant of the Court will extend to sails and rigging taken on shore for the purpose of safe custody as well as to the ship itself. *The Alexander, Tate*, 1 Dodson, 282.

18. In a testamentary suit the citation of a party by an erroneous Christian name, there being no doubt as to the identity of the person, held sufficient. *Powell v. Burgh and Others*, 2 Lee, 517.

19. In all cases of "processes" served on a minor the Ecclesiastical Court requires a certificate of its having been served in the presence of the natural or legal guardian of the minor, or at least in that of some person or persons upon whom the actual care and custody of the minor for the time being has properly devolved. *Cooper v. Green*, 2 Add. 454.

20. Under ordinary circumstances the Court will, *ex debito justitiæ*, enforce obedience to its decrees already made. *Greenhill v. Greenhill*, 1 Curteis, 466.

## IV. AS TO DEFAULTS AND PRIMUM DECRETUM.†

21. The effect of a *primum decretum* should be only, in the first instance, to put

\* 1. If the process is to be served within twenty miles from the city of London, it is to be given to the Marshall for service, but if at any greater dis-

tance, it is committed to the party who applies for it. *Clerke's Prax. Adm.* 5.

† 2. If the party be contumacious and will not

the party into possession of the *res ipsa*. All further proceedings of sale and power over the proceeds should be by subsequent application to the Court. *The Exeter, Whitford*, 1 C. Rob. 173.

22. In a cause of collision the Court will, preparatory to a decree of sale, sign a *primum decretum* on an affidavit that the ship is in a perishable condition. *The Sylvan, Bell*, 2 Hagg. 155.

23. A decree of appraisal and sale of a derelict having been suffered to issue before the usual defaults had been granted, and *primum decretum* signed, and the vessel having been sold, and the proceeds brought into the registry, the Court, under the circumstances, the disbursements, &c., exceeding the amount of proceeds, and the proctor of the Admiralty not opposing, on motion signed *primum decretum*, and at the same time permitted the proceeds, upon the usual security, to be paid out of the registry for the use of the salvors, without a further special application to the Court. *The Conception, Eruzuma*, Ibid. 175.

#### V. AS TO BAIL.

24. By Order of Court of 5th August, 1806, it is directed that in every case where bail is required to be given in any cause depending in the Court of Admiralty, a notice in writing of the persons proposed to become bound shall be delivered at the office of the adverse proctor; and no bail bond or recognisance in such cause shall be taken, unless the adverse proctor, or some other proctor for him, be then present, or an affidavit be exhibited to prove he has had such notice for the space of twenty-four hours, and been required to attend at the time of giving such bail, for the purpose of objecting or consenting thereto.

*See BAIL.*

#### VI. AS TO APPEARANCE.

25. Appearance waives any objection so far as respects the formality of the proceedings. *Prankard v. Deacle*, 1 Hagg. (Eccl.) 185.

26. Proceedings on an application by foreign ambassador on behalf of the subjects of his country, who afterwards make a similar application for themselves, are by such intervention substantiated; and any formal objections to the proceedings, on the ground of the authority of the ambassador, removed. *The Hercules, Chitty*, 2 Dodson, 369.

#### VII. AS TO PROXIES.\*

27. The ancient practice of the Court of Admiralty with regard to appearances was originally the same as that of the Ecclesiastical Courts, i. e. to require proctors to exhibit proxies from their clients, authorizing proceedings. By the modern practice, however, and for a period of at least 200 years past, proxies have been dispensed with, and a proctor is at liberty to commence or defend a suit on his own responsibility, without the production of any proxy. He is bound, however, to produce his parties before the Court when called upon so to do; and the Court will expect that he be duly authorized by some person having an interest in the cause in issue, or that he have a justifiable and strong ground for believing that the person for whom he appears has such an interest. The Court has a right to call upon the proctor at any period of the cause prior to its being dismissed out of Court, to state, not generally but specifically by name, the whole of the parties for whom he is authorized to appear. *The Wilhelmine*, 1 W. Rob. 337. 340., 2 Notes of Cases, 216.

28. In a cause of possession instituted by a majority of the owners to dispossess the master, the Court will not, at the hearing, listen to a suggestion that certain of the owners had not authorized the proceedings taken on their behalf, the defendant's remedy being to call for a proxy in an early stage of the cause. *The New Draper, Walker*, 4 C. Rob. 290.

#### VIII. AS TO OBJECTIONS TO THE JURISDICTION OF THE COURT.†

29. In a cause of damage in respect of a

appear to defend his ship or goods challenged, the Judge, after three or four citations from the Admiralty, called *quatuor defaultes*, may proceed *ad primum decretum*. *Clerke's Prax. Adm.* 72. On the practice with reference to the grant of such defaults, see *Ibid.* 81. *et seq.* By the *primum decretum* the Court puts the plaintiff in possession of the defendant's property, which has been arrested,

in order that the defendant, being affected by the grievance, may be compelled to answer within the year and recover the possession of his goods. *Ibid.* 83.

\* 3. By the ancient practice of the Court of Admiralty, proxies were exhibited by the proctors. *Clerke's Prax. Adm.* 13. 15.

† 4. Questions of jurisdiction are always of

collision occasioned by a foreign vessel, protest of the foreign vessel against such proceedings on the ground of exemption from responsibility by reason of a licensed pilot being on board, overruled, the grounds of exemption being held to be matter of defence, and not of protest, the jurisdiction of the Court not being denied. *The Giro-lamo, Guiranovich*, 3 Hagg. 173.; *The Gladiator, Britten*, Ibid. 340.; *The Eliza Jane, Findlay*, Ibid. 337.; *The Protector, Edgar*, 1 W. Rob. 62.

30. An appearance under protest, which is in the nature of a plea in bar, is not the proper form of raising an objection to the jurisdiction of the Court. *The Alexander, Larsen*, 1 W. Rob. 293. Such an appearance is only to be given where there is a real question as to the jurisdiction. *The Protector, Edgar*, 1 W. Rob. 62.

31. Where a party objects to the jurisdiction of the Court, the proper course is to appear under protest. Where the jurisdiction is not denied, the proper course is a plea in bar. By the strict practice, the party ought to plead all the matter on which he relies for his defence; but on a proper case stated (*ex parte*), the Court will allow the party to sever his defence, and to plead in bar in the first instance, reserving to him the right to plead generally, if the plea in bar be not sustained. *The Sarah Jane*, 7 Jur. 659.

32. An objection to the jurisdiction of the Court may be taken at any time; but it is more usual and convenient to do so at the commencement of proceedings. *O. I. p.* by *Taylor v. Morley*, 1 Curteis, 481.

#### IX. AS TO RELEASING SHIPS FROM ARREST.

33. A vessel and cargo having been arrested in a suit for salvage and bail given, application of the owners to have the ship and cargo released, supported by affidavits that they were daily deteriorating in value, and opposed by the salvors, who prayed a commission of appraisement, granted by the Court under the circumstances of there being an action for damage to the ship by collision also pending at the suit of the owners, and on the condition of the owners making statements of the value in acts of Court, and undertaking to afford

every facility to the salvors in another valuation, should the value be further impeached. *The Glasgow Packet*, 8 Jur. 67.

34. The Court will issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the supersedeas. When a supersedeas issues, instantaneous obedience must be paid to it. *The Towan*, 8 Jur. 222.

35. It is not necessary that a supersedeas should be served upon the agent of the salvors; it may be served on board the ship. *The Cumberland*, 9 Jur. 191.

36. *Quere* whether the service on a Sunday is a good service. *Ibid.*

#### X. AS TO ENFORCING THE PRODUCTION OF PAPERS.

37. By 3 & 4 Vict. c. 65. s. 9. the production of documents may be compelled by the Judge of the Court of Admiralty or by Commissioners appointed in pursuance of that act, by process in the form as near as may be of a *subpoena duces tecum*; and every person disobeying such process shall be considered in contempt of the Court, and punished accordingly.

38. Motion, founded on an *ex parte* affidavit of the owners for monition against an agent, to bring in the ship's papers belonging to a foreign vessel, rejected, the case not being an original cause of possession, in which the Court would have the power to make an order for the production of the ship's papers as incidental to the cause. *The Lusitano, Dos Sanctos*, 1 W. Rob. 166.

39. An application for a monition against certain parties not in the cause, to bring in certain papers (founded on an affidavit to show they were under the probable control of those parties) refused, but the Court intimated, that on the fact being pleaded and admitted in an allegation, a monition might then be granted. *Tagart and Bakewell v. Hooper and Harris*, 1 Curteis, 289. n.

#### XI. AS TO PLEADINGS.

40. An act on petition is a summary mode of proceeding, in which the parties state their respective cases briefly, and support their statements by affidavit. It is a convenient form in matters of slight

great importance, and the Court, as well as the other party, ought to be aware when such a question is intended to be raised. It ought always to be raised in the first instance, and if not, it is not

properly raised before the Court. *The David, Luckie*, (1840), 9 Monthly Law Mag. (Notes of Cases), 209.

interests, and of not very delicate investigation, but not adapted for a case of importance and resting on minute facts. *The Ville de Varsovie*, 2 Dodson, 184.

41. Proceedings by plea and proof are the ancient law of the Court of Admiralty. The more summary proceeding by act on petition and affidavits was introduced for the sake of convenience alone. *The Minerva*, *Crawford*, 1 W. Rob. 169.

42. In proceedings in the Court of Admiralty, the suitor is entitled, subject to the liability for costs, to choose his own mode of proceeding, whether by act on petition and affidavits, or by plea and proof. A libel on behalf of a bondholder in a cause of bottomry, the admission of which was opposed as being an unusual mode of proceeding in such suits, admitted to proof, the Court, however, intimating, that if any unnecessary expense or hardship should by such a mode of proceeding be imposed on the parties opposing the validity of the bond, it would hold the bondholder responsible for the costs thereof, even though the validity of the bond should be ultimately pronounced for. *Ibid.*

43. On an appeal from an award of salvage by magistrates, application of the appellants for leave to withdraw their act on petition, for the purpose of extensive alteration and amendment, after the usual copy duly signed had been delivered to the Admiralty proctor, who had brought in his reply thereto, refused. *The Aurora*, *Clark*, *Ibid.* 322.

44. By Order of Court of 18th of March, 1835, it is directed, that in all cases of acts on petition, whether on the merits of a cause or on any incidental matter, the original act shall be brought into the registry signed by the counsel and proctor, and endorsed with the date when so brought in; a true copy thereof, similarly dated, being delivered at the same time to the adverse proctor. That in like manner the reply and all subsequent rejoinders shall be brought in and copies delivered. That when either proctor shall decline to write further to the act, the conclusion, accompanied by the proofs, shall be brought into the registry dated and signed by both proctors.

*See ante*, No. 31.

## XII. AS TO ASSIGNATIONS.

45. By Order of Court of 27th of April, 1831, on an appearance being given to any action, the Court will require the party

instituting the suit to take immediate steps for bringing the cause to an issue, and for this purpose the promoter's proctor shall within fourteen days deliver into the registry his act on petition (where the proceeding is by an act), and if the act shall not be so brought in, the registrar shall report the same to the Court at its next sitting. The same rule shall be applicable to the reply of the defendant to the act on petition, and to each stage in which the act may have to pass from one proctor to the other. Where the course of proceeding shall be by libel, it shall be brought into the registry within the same time limited for an act, and the like course be adopted as aforesaid if delays shall arise. And with respect to future stages or proceedings, whether the same be by act or libel, the registrar shall on any delay taking place on either side in complying with any assignation bring the same to the notice of the Court at its next sitting.

46. By Order of Court of 18th of March, 1835, it is directed, that the registrar shall on every Court day call every assignation not complied with, whether required by the adverse proctor or not.

## XIII. AS TO AFFIDAVITS.

47. The Court will not receive on the mere affidavit of the defendant facts which might be a bar to the action. Such an affidavit rejected. *The Lord Hobart*, *Gamage*, 2 Dodson, 101.

48. The Court cannot be expected to decide upon charges partaking strongly of a criminal nature, upon mere voluntary affidavits. *The Apollo*, *Tennant*, 1 Hagg. 315.

49. An application made immediately before judgment given to read an affidavit of a party in explanation and justification of his conduct in certain proceedings which appeared in evidence in a suit, and had been animadverted upon by the opposite counsel at the hearing, refused. *Wood and Others v. Goodlake, Helps, and Hitchings*, 2 Curt. 97.

*See AFFIDAVITS.*

## XIV. AS TO TERMS PROBATORY.

50. If due diligence has been used, the Court will grant an extension of the term probatory, in order that material witnesses may be examined. *Portsmouth v. Portsmouth*, 1 Hagg. (Eccl.) 1.

51. A party who has once prayed pub-



lication, though stopped by an asserted allegation, is not at liberty to produce further witnesses upon his plea, as a matter of course; that is, not without special ground laid, and without the leave of the Court, in the event of the asserted allegation not being actually filed. *Bruce v. Burke*, 2 Add. 404.

52. The term probatory assigned on a third plea opens the term probatory on the previous pleas in the cause. *Stone v. Stone*, 3 Curteis, 721.

53. Applications to extend terms probatory are in the discretion of the Court, who may grant them or not, or extend the terms upon such conditions as may seem meet for the purposes of justice. An application to extend a term probatory on a third plea granted, on the condition that the witnesses were examined only on that plea. *Ibid.* 724.

#### XV. AS TO RESCINDING THE CONCLUSION OF THE CAUSE.

54. In a suit for mariners' wages in the Court of Admiralty, the Judge, at the hearing, rescinded the conclusion of the cause in order to allow a second witness to be produced in support of the mariner's summary petition; and on two subsequent occasions, on affidavits, also rescinded the conclusion of the cause for the same purpose. From the third rescinding of the cause, an appeal was interposed on behalf of the owners to the Delegates, who, however, pronounced against the appeal with costs, and remitted the cause. *Henley & Dudderidge v. Morrison*, 2 Hagg. (Eccl.) suppl. 147.

55. One of the parties in a suit of joint-capture having waived the answers of the adverse party, relying upon the evidence of a log which proved to be inadmissible, the conclusion of the cause was, on his application, rescinded for the purpose of taking the answers, but not for the admission of further pleading and evidence. *Le Niemen, Dupotet*, 1 Dodson, 10.

56. All the evidence in a cause is the evidence of all the parties; the suspending a part of the case, so as only to affect one of the parties, is not agreeable to practice. *Waller & Smyth v. Heseltine & Burgh*, 1 Phill. 173.

57. The Court might, within the limits of the very extended equity which it is in the habit of exercising, suffer a cause to be reopened on a direct case of fraud or something equivalent to it being made out, but

mere negligence or oversight would not be a sufficient ground for such an application. *The Fortitude, Henrickson*, 2 Dodson, 70.

58. At the hearing of a cause, it appeared that a report which had been pleaded as only verbally made of the result of an investigation had been made in writing, the Court thereupon, the adverse party not opposing, rescinded the conclusion of the cause in order to the document being properly pleaded, which having been done, publication passed a second time. An allegation offered by the adverse party, pleading certain facts connected with the report, rejected by the Court on the ground that it contained matter pleadable at an earlier stage of the cause, the necessity for such plea not being affected by the fact of the report being verbal or in writing, and the plea not having been asserted before publication had passed a second time. *Phillips v. Phillips*, 3 Curteis, 796.

59. The Court, before granting a prayer to rescind the conclusion of a cause in order to the admission of an allegation, requires an affidavit that the facts are material as well as "*noviter perventa*," and the allegation should be tendered at the time of making the prayer. *Smith v. Blake*, 1 Hagg. (Eccl.) 88.

See PLEADINGS, *cap.* III.

#### XVI. AS TO POSTPONING HEARING.

60. Application to postpone the hearing of a cause, on the ground that a bill of indictment for perjury had been found against one of the principal witnesses, granted to the extent of a limited postponement, but a further postponement refused. *The Jane and Matilda, Chandler*, 1 Hagg. 187.

61. The Court will not postpone the hearing of a cause until an indictment of witnesses for perjury in their depositions in the cause has been tried, though a true bill has been found against them. *Maclean v. Maclean*, 2 Hagg. (Eccl.) 601.; *Kenrick v. Kenrick*, 4 Hagg. (Eccl.) 193.

62. Proceedings in the Ecclesiastical Court in a suit as to the validity of a will suspended, pending the trial of one of the parties therein for the forgery of the will in question. *Panton v. Williams*, 2 Curteis, 552.

#### XVII. AS TO INVOCATION OF PROCEEDINGS.

63. *Seem*, that proceedings cannot be invoked but when the cause is between the same parties or on the same point. Application for proceedings to be invoked

from another cause, rejected. *Dearle v. Southwell*, 2 Lee, 93.

See PRIZE, cap. XI. sect. 3.

### XVIII. AS TO ABATEMENT OF SUIT.

64. A suit carried on by the attorney of an executor does not abate on his death, a proxy having been originally exhibited for one of the executors as well as for the attorney of the executors. *Grant v. Atkinson*, 1 Lee, 161.

### XIX. AS TO ALTERATIONS OF THE DECREES OF THE COURT.\*

65. *Quære*, has the Court of Admiralty the power of reviewing its decrees? If so it is a power the Court would exercise with great caution. Application to re-hear a cause refused. *The Vrouw Hermina, Jonker*, 1 C. Rob. 168.

66. Application to the Court of Appeal to rescind a decree made a year previously condemning certain cargo for insufficiency of proof of property, on a suggestion and tender of proofs of the neutral character of a house of trade asserting an interest therein, rejected on the ground that it was contrary to the practice of the Court to rescind its decrees. *The Elizabeth, Soestadt*, 2 Acton, 57.

67. Restitution of cargo having been decreed by the Court of the Lords Commissioners of Appeal in Prize Causes on further proof, on the reference of account sales to the registrar and merchants, it was discovered that the further proof adduced was fraudulent. Application to the Court to rescind its decree on the ground of the fraud refused, it being contrary to the practice of the Court to rescind its decrees. The Court, however, intimated to the parties that if they could satisfactorily prove they were aggrieved, they might apply to the Court in another shape. *The Geheimerath, Shack Rathlow*, Ibid. 58. n.

68. A former decree of the Lords of Appeal rescinded, and property finally condemned (the special grounds thereof not reported). *The Harmony, Paoli*, Ibid. 60. n. and see note to *The Herstelder, De Koe*,

1 C. Rob. 118.; *The Harmony, Norman*, 2 Dodson, 78.

69. The Court of Admiralty possesses the same discretionary power of varying its decrees as is possessed by other Courts of this country. Such variation, however, should be confined to an alteration of an error arising from defect of knowledge or information upon a particular point in the case, and the error must be brought to the attention of the Court with the utmost possible diligence. *The Monarch, Bell*, 1 W. Rob. 21.

70. In an action of damage both parties in the cause were pronounced to be in fault, and the loss decreed to be borne equally between them, the vessel proceeded against being condemned in the costs by Sir John Nicholl, who was afterwards succeeded by Dr. Lushington. On a subsequent application to the Court (Dr. Lushington) to vary the decree as to the costs, on the suggestion that the decree had not been accurately taken down, and had been meant to leave each party to pay his own costs, the Court, though refusing to allow the accuracy of the registrar's minute to be questioned, held that the costs ought, on the authority of cases cited, to be borne by each party, and that Sir J. Nicholl would have so altered the decree could he have been applied to; and therefore altered the decree accordingly, but declined to make any order as to the costs of such application. *Ibid.*

### XX. AS TO THE INSTITUTION OF A SECOND SUIT IN RESPECT OF THE SAME CAUSE OF ACTION.

71. Parties who had abandoned a former suit instituted by them to compel the payment of two bottomry bonds, Held not to be at liberty, no strong grounds being shown, to bring a second suit upon the same bonds. Such a suit dismissed accordingly, with costs and demurrage. *The Fortitude, Henrickson*, 2 Dodson, 58.

### XXI. AS TO CONFERENCES FOR COMPROMISE.†

72. An intercourse for the settlement of

\* 5. The Court of Admiralty, as well as the Prize Court, has jurisdiction to hear and revise its own decrees, but will very reluctantly permit such a proceeding. 2 Chitty's Gen. Prac. 538.

† 6. A negotiation and settlement with a party for whom another proctor had appeared, without intimation to the other proctor, is irregular and improper. *The Haidee*, 1 Notes of Cases, 599.

7. In a cause of salvage, a negotiation and settlement with certain of the salvors, unknown to their proctor, and certain offers in the nature of a tender to the others of them, in satisfaction of their claims, Held to be no legal settlement or tender, and overruled accordingly with costs. *Ibid.* 600.

a claim is best conducted by the proctors of the parties in person. Preliminary negotiations, especially in causes of wages, are entitled to the peculiar protection of the Court. There is no necessity to state at such interviews that they are without prejudice; the *res gestæ* sufficiently indicate it. *The Frederick, Hearn*, 1 Hagg. 220.

73. At a meeting for amicable arrangement of claims, where the parties are personally produced for the purpose of fair agreement and to prevent litigation, a fair disclosure of all facts tending to a just conclusion should be made, and facts, without which a knowledge of the real justice is unattainable, should not be suppressed. Parties should attend such a meeting in a spirit of equitable adjustment. *Ibid.* 223.

74. The Court can take no notice of any understanding asserted to have been made between the parties out of Court. *The Manchester, Macleod*, 1 W. Rob. 94.

75. The Court of Admiralty will not take judicial cognisance of agreements between proctors not appearing in acts of Court. Such agreements are for the cognisance of Courts of Equity, which can alone try their validity, and give effect to them. *The Saracen*, 10 Jur. 398.

## XXII. MISCELLANEA.\*

76. By 3 & 4 Vict. c. 65. s. 1. the Dean of the Arches is authorized to sit for the Judge of the High Court of Admiralty in certain cases.

77. By s. 2. advocates, surrogates, and proctors of the Court of Arches, are to be admitted to act as such in the High Court of Admiralty.

78. Until a decree has been actually made, the Court is bound to consider every claim against any funds in Court, and howsoever these funds may have been brought there. *The Constancia*, 10 Jur. 849.

79. A foreign ship having been condemned in the damage arising from a collision between her and another vessel, in an action brought by the owners of such vessel and of a portion of the cargo, the ship was sold under a decree of the Court, and the proceeds brought in. On the same day on which the decree for the damage was pronounced, an action was entered for the owners of the remaining cargo of the vessel damaged. The proceeds being insufficient to meet both claims, application of the owners of the remainder of the cargo to share *pro rata* with the first plaintiff, rejected on the ground that parties who had obtained the decree could not be deprived of the benefit of it by parties coming in afterwards, or on the day the decree was pronounced; but, *semble*, such parties would have been entitled to share had they brought their action prior to the decree being pronounced. *The Saracen*, 10 Jur. 396.

80. A party cannot be heard to aver against his own act, even for himself, and much less for other persons parties thereto. *The Hare, Bertoddy*, 1 Dodson, 478.; *The Baltimore, Baker*, 2 Dodson, 137.

81. The next of kin of parties to a suit in the Ecclesiastical Court are bound by the decision there against such parties. *Watkin and Bligh v. Brent*, 1 Curteis, 266.

82. The Court, if prayed, will direct its officer to attend with the papers in a cause at the trial on an indictment preferred by one of two litigant parties against certain witnesses examined on behalf of the other for a conspiracy to sustain by false oaths the case of the other. *Westmeath v. Westmeath*, 2 Add. 380.

83. In setting up the decisions of foreign Courts, an exemplification of the judgment is required. *Koster v. Sapte*, 1 Curteis, 702.

\* 8. The following matters mentioned in the schedule to 55 Geo. 3. c. 184., not being mentioned in the schedule to the 5 Geo. 4. c. 41. (the last Stamp Act), are still liable to the duties by such former act imposed. Proceedings in the High Court of Admiralty, the Courts of the Cinque Ports exercising Admiralty jurisdiction, the High Court of Appeals in Prize Causes, and the High

Court of Delegates in Admiralty matters in England. Exemplification under seal of any of the said Courts of any record or proceeding therein: duty 3*l*.

9. A caveat is of no avail in the Court of Admiralty further than as a notice to the other proctor. *The Soegutten*, 3 Notes of Cases, 270.

## PRIVATE ADVENTURE.

1. The master and claimant of a vessel condemned for breach of blockade allowed by the Court in the exercise of an indulgence, which it is always willing to show to this class of men, when their conduct is fair and unimpeachable in point of good faith, his private adventure and personal expenses attending his claim thereof. *The Calypso, Schultz*, 2 C. Rob. 298.

2. In a case of condemnation of a ship for breach of blockade, master's private adventure restored. *The Adelaide, Rose*, 2 C. Rob. 111. n.; *The Hurtige Hane, Dahl*, Ibid. 128.

3. In a case of enemy property, freight refused, and private adventure of master, mate, and supercargo rejected on the ground of prevarication in their evidence. *The Anna Catharina, Wupper*, 4 C. Rob. 120.

4. Master's private adventure, which was considerable, refused in a case in which his conduct was tainted with fraud. *The Christiansberg, Vanderveide*, 6 C. Rob. 382.

5. The private adventure of a master of a neutral vessel condemned for carriage of contraband of the most noxious character, and where he had not made an ingenuous disclosure of the facts in his possession, refused. *The Friendship, Collard*, Ibid. 429.

6. In a case of condemnation of a ship for carriage of enemy's despatches, an application to the Court on behalf of the master, that he might be allowed his private adventure, rejected, and the private adventure refused, the Court observing

that this was a description of cases in which the usual indulgence of the Court in that respect would be misapplied; that it was an offence originating chiefly in the misconduct or culpable negligence of the master, and that whilst he was acting thus culpably and wantonly with respect to the property of his owner, it could not be expected that he himself should escape with impunity as far as his own adventure in that transaction was concerned. *The Susan*, Ibid. 462. n.

7. Whenever it appears that the master is the principal agent in a fraud, the Court will not give him his private adventure, but will leave him to the mercy of the captors; master's private adventure refused in a case of blockade, in which the ship and cargo were condemned on the ground of concealed illegal destination. *The James Cook, Jougain*, Edwards, 264.

8. A ship and cargo, the property of the Danish East India Company, were condemned as droits of Admiralty at Calcutta, and the private adventures of the master and several of the officers were restored by the Court. On application to the Lords of the Treasury on behalf of the purser to be indemnified for the condemnation of his private adventure, the matter was referred to the High Court of Admiralty, where, on motion of counsel, though no instance of restitution to pursers on board Danish East Indiamen could be adduced, the applicant's private adventure was decreed to be restored. *The Prince of Augustenburg*, 2 Hagg. 91.

## PRIZE.

## I. GENERAL CONSIDERATIONS AS TO —, 310.

1. *Proceeds of prize*, 310.
2. *Parliamentary and Crown grants in lieu of prize*, 310.

## II. OF THE JURISDICTION OF COURTS AS TO —, 311.

1. *Of Courts generally*, 311.
2. *Of the Court of Lords Commissioners of Appeal in Prize causes*, 311.
3. *Of the Prize Court of Admiralty*, 312.
  - (a) *Generally*, 312.
  - (b) *To what extent excluding proceedings at Common Law*, 313.
  - (c) *As to proceedings pending appeal, and after lapse thereof*, 313.
  - (d) *Over booty*, 314.
  - (e) *As to Vice-Admiralty Courts*, 314.
4. *Of Vice-Admiralty Courts*, 315.
5. *Of foreign belligerent Courts of Prize*, 315.
  - (a) *Generally*, 315.
  - (b) *Sitting in neutral countries*, 315.
  - (c) *Where the prize was lying in a neutral port*, 316.
6. *Of Courts of Equity* — see COURTS.

## III. WHAT IS PRIZE OF WAR — ET CONTRA, 317.

1. *As dependent on the time of capture*, 317.
  - (a) *Captures made prior to notification of hostilities*, 317.
  - (b) *Captures made after the conclusion of a treaty of peace*, 317.
2. *As dependent on the question of ownership*, 317.
  - (a) *Neutral claims to — where pronounced for*, 317.
  - (b) *Neutral claims to — where pronounced against*, 317.
  - (c) *Unclaimed neutral property, how dealt with*, 318.
  - (d) See ALIENS, NATIONAL CHARACTER, NEUTRALS, TITLE.
3. *As dependent on the trade engaged in*, 318.
  - (a) *Generally*, 318.
  - (b) *Of the ship, how affecting the cargo*, 319.
  - (c) *Fraud as to the ulterior voyage*, 319.
  - (d) *Other trading*, 319.
  - (e) See BLOCKADE, CARGO, CONTINUITY OF VOYAGE, CONTRABAND, LICENCES, TRADE WITH THE ENEMY.
4. *As dependent on the conduct of the claimants*, 321.
  - (a) *Resistance to captors*, 321.

- (b) *Spoilation of papers*, 321.
- (c) *Deviation*, 322.
- (d) *Assumption of disguise*, 322.
- (e) *The covering enemy property*, 322.
- (f) *Cases of conjunction with enemy interests*, 322.
- (g) *Other acts amounting to a violation of neutrality — et contra*, 323.
5. *Cases of British prize ships in the military service of the enemy*, 323.
  - (a) *Cargo on board such ships*, 324.
6. *Other cases*, 324.
7. *Exemption from condemnation under treaties, where allowed — et contra*, 325.

## IV. OF PRIZE TAKEN IN CONJUNCT EXPEDITIONS, 325.

## V. OF THE RIGHT TO —, 325.

1. *Of the Crown*, 325.
  - (a) *Generally*, 325.
  - (b) *To what extent divested by grants to captors*, 328.
2. *Of captors*, 329.
3. *Of the Lord High Admiral* — see DROITS OF ADMIRALTY.

## VI. OF THE DISTRIBUTION OF —, 329.

1. *Who entitled to share — et contra*, 329.
2. *Proportions of individual captors*, 330.
3. *Between two or more privateers*, 331.
4. *Amongst non-commissioned captors*, 331.
5. See FLAG SHARE, GREENWICH HOSPITAL.

## VII. OF THE PAYMENT OF —, 331.

1. *Generally*, 331.
2. *In cases of pre-emption of prize cargoes by the Navy Board* — see NAVY BOARD.

## VIII. OF THE ASSIGNMENT OF —, 331.

## IX. OF THE CONVERSION OF —, 332.

## X. OF THE LIABILITY OF PARTIES IN POSSESSION OF PRIZE PROPERTY, 332.

## XI. PRACTICE IN PRIZE CAUSES, 333.

1. *Generally*, 333.
2. *In cases of restitution of property of small value*, 333.
3. *As to invocation of proceedings*, 333.
4. *As to the evidence to be taken or received*, 333.
5. *As to condemnation of vessels while lying in neutral ports*, 334.
6. *Miscellanea*, 334.

See CAPITULATIONS, CAPTORS, CAPTURE, CLAIMANTS, CARGO, FREIGHT, LETTERS OF MARQUE, RANSOM, RECAPTURE, RESTITUTION, SALVAGE (military).

## I. GENERAL CONSIDERATIONS AS TO — \*

1. In a case of seizure of cargo on board ship in the port of London, as prize by the Marshall of the Admiralty, the presumption would be against the seisor, and the claimant would be entitled to the favourable consideration of the Court, because the *prima facie* presumption arising on goods found in such a situation is that they are not the property of an enemy. *The Conqueror*, *Tate*, 2 C. Rob. 303.

2. By intendment of law all property condemned is the property of enemies, that is, of persons so to be considered in the particular transaction. *The Elsebe*, *Maas*, 5 C. Rob. 176.

3. The right of war is a right *in re*, and the Court of Prize accordingly attends only to the *res ipsa*, and the *onera* attaching on the property in right of possession. *The Hoffnung*, *Hardrath*, 6 C. Rob. 383.

4. The prize law looks primarily to violations of belligerent rights as grounds of confiscation in vessels not actually belonging to the enemy, but it has extended itself considerably beyond considerations of that description only. *The Fortuna*, *Verissimo*, 1 Dodson, 84.

5. The word prize mentioned in the acts 46 Geo. 3. cc. 100. and 101., and 57 Geo. 3. c. 127. means maritime capture effected by maritime force only—ships and cargoes taken by ships. *Genoa and its Dependencies*, 2 Dodson, 446.

1. *Proceeds of Prize.*

6. The Court of Admiralty has jurisdiction over proceeds of prize lawfully or justifiably converted, the property in that case continuing prize, but such proceeds converted without authority or justification are not entitled to the privileges of prize property, or to be considered as such at the instance of the captors who have so converted them. *L'Eole*, *Rosseau*, 6 C. Rob. 224.

7. The proceeds of prize may be followed wherever they can be traced. *The Pomona*, *McNaught*, 1 Dodson, 25.

8. The proceeds of prize in money or otherwise are as much prize as the property actually captured. The ordinary practice is to convert the property captured into money or commodities, or to estimate and take the value thereof. *French Guiana*, 2 Dodson, 162.

9. Interest made with the proceeds of a prize is considered as part of the proceeds. Therefore the Court of Appeal may, on reversing a sentence of condemnation, direct such interest to be paid by the party who may have received it as such, and therefore by the prize agent. *Willis v. Commissioners of Appeal in Prize Causes*, 5 East, 22., 1 Smith, 339.

2. *Parliamentary and Crown grants in lieu of prize.*

10. A grant made by parliament in lieu of prizes restored to the enemy held to be a grant of the nature of prize, and that questions arising on it, when referred to the Court of Admiralty, are to be considered on the principles of prize. *The Naples Grant*, 2 Dodson, 275.

11. The Court cannot consider whether a grant in lieu of prize made to the navy only ought not to have been made to the army and navy, as forming a conjunct expedition. It must take the grant as it finds it, and apply it accordingly. *Booty in the Peninsula*, 1 Hagg. 53.

12. In a grant of proceeds of prize between a governor and garrison of a place A. and the commander and crew of a ship B., to a joint agent of the parties, subject to a scheme of distribution to be proposed by him and approved of by the Court of Admiralty, and subject to the decision of such Court upon any claim of disputed interest between the parties; objections to the scheme and to the right of the garrison to share, as not having been con-

\* 1. The principal statutes relating to naval prize are 1648, c. 12., 1649, c. 21., 1650, cc. 28. and 33., 6 Anne, c. 13., 13 Geo. 2. c. 4., 17 Geo. 2. c. 34., 29 Geo. 2. c. 34., 32 Geo. 2. c. 25., 33 Geo. 3. c. 34., 33 Geo. 3. c. 66., 38 Geo. 3. c. 38., 41 Geo. 3. c. 76., 41 Geo. 3. c. 96., 43 Geo. 3. c. 160., 45 Geo. 3. c. 72., 46 Geo. 3. c. 100., 48 Geo. 3. c. 100., 48 Geo. 3. c. 132., 49 Geo. 3. c. 123., 53 Geo. 3. c. 63., 54 Geo. 3. c. 93., 55 Geo. 3. c. 160., 57 Geo. 3. c. 127., 58 Geo. 3. c. 64., nearly all of which have expired with the wars which gave rise to them. The 54 Geo. 3. c. 93. consolidates the laws relating to

Navy Prize Agents, and is still in force. The statutes regulating the distribution of prize taken by conjunct British and allied ships are the 47 Geo. 3. sess. 1. c. 47., 48 Geo. 3. c. 100., 4 Geo. 4. c. 65., 5 Geo. 4. c. 107., and 2 W. 4. c. 53. The statutes regulating the apportionment of shares of prize money acquired by soldiers or seamen in the service of the East India Company are 1 & 2 Geo. 4. c. 61., 9 Geo. 4. c. 50.

2. See the provisions as to naval prize contained in the 55 Geo. 3. c. 160., the latest general Prize Act, (which, however, expired with the last war).

cerned in the capture, overruled, on the ground that the Court could not act at variance with the terms of the grant, and on the general merits the scheme confirmed. *La Esperanza*, 1 Hagg. 85.

## II. OF THE JURISDICTION OF COURTS AS TO —

### 1. Of Courts generally.

13. The members of the provisional government of a recently-conquered country seized the property of a native of the conquered country, who had been refused the benefit of the articles of capitulation of a fortress of which he was governor, but who had been permitted to reside, under military surveillance, in his own house in the city, in which the seizure was made, and which was at a distance from the scene of actual hostilities; *Held* that the seizure must be considered, regard being had both to the time, place, and person, in the light of a hostile seizure, made, if not *flagrante*, at least *nondum cessante bello*, and that a

municipal court had no jurisdiction in the matter. *Elphinstone v. Bedreechund*, 1 Knapp, 317.

### 2. Of the Court of the Lords Commissioners of Appeal in Prize Causes.

14. The Prize Courts and Courts of Lords Commissioners of Appeals have the sole and exclusive jurisdiction over the question of prize or no prize, and who are the captors, notwithstanding any of the prize acts; and if they pronounce a sentence of condemnation, adjudging who are the captors, the Courts of Common Law cannot examine the justice or propriety of it, even though perhaps they would have put a different construction on the prize acts. But no right is vested by any of the prize acts in the captors of an enemy's ship in time of war before the ultimate adjudication of the Courts of Prize. The issuing a monition thereon to the prize agents by the Court of Lords Commissioners of Appeal in Prize Causes, to

\* 3. The general doctrine is, that the trial of prize belongs exclusively to the Courts of that state to which the captor belongs. *The Invincible*, 2 Gallison's (AMERICAN) Rep. 36.; *The Estrella*, 4 Wheaton's (AMERICAN) Rep. 298.

4. It makes no difference whether the captured property is brought within the territory of the capturing power or of a neutral, or whether it belongs to an enemy or to a neutral. *Ibid.*

5. The ground upon which the exclusive cognisance of the question of prize is left to the capturing power, is the equality and absolute independence of sovereign states on the one hand, and the duty to observe uniform impartial neutrality on the other. *L'Invincible*, 1 Wheaton's (AMERICAN) Rep. 298.

6. It is an exception to this general rule where the captured vessel is brought, or voluntarily comes *infra presidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the cruiser which made the capture, and if such violation has been committed, is in duty bound to restore to the original owner property captured by cruisers illegally equipped in its ports. *The Estrella*, 4 Wheaton's (AMERICAN) Rep. 298.

7. Another exception to the rule is where the capturing vessel has been illegally equipped in a neutral country. It is competent to the Courts of such neutral nations to punish the offenders, and in case the prizes taken by them are brought *infra presidia*, to order them to be restored. *The brig Alerta and Cargo v. Blas Moran*, 9 Cranch's (AMERICAN) Rep. 359.

8. Another exception to the rule is the case of captures made without a lawful commission, fraudulently and piratically, or in violation of the territorial rights of the country into which the property is brought; for the purpose of inquiries of this sort, neutral Courts may entertain jurisdiction,

and in proper cases award restitution. *The Invincible*, 2 Gallison's (AMERICAN) Rep. 36.

9. This exception, however, extends the jurisdiction of neutral Courts in matters of prizes made by foreign cruisers only to cases where the prize property itself is within the ports of the neutral country. *Ibid.*

10. Where the foreign cruiser itself only is within the neutral country, the jurisdiction will not be extended over the prizes it may have captured; *a fortiori* it will not, where the foreign cruiser has not sought a voluntary asylum, but comes in by compulsion in the hands of recaptors succeeding to hostile captors. *Ibid.*

11. Nor is the jurisdiction of the Courts of the country to which the foreign cruiser belongs ousted by a subsequent recapture by a power then at war with that country, before the prize had reached the ports of the original captors, for although the right to adjudicate as prize is divested by the subsequent recapture, it is still competent for the Courts of the original captors to entertain a suit by the owners for damages if the capture be illegal. *Ibid.*

12. The recapture of the prize, therefore, or the bringing of the foreign cruiser within neutral ports, does not vest in the neutral Court a jurisdiction which it was otherwise incapable of assuming. *Ibid.*

13. A French privateer was confiscated by the English Court of Admiralty on account of illegal depredations committed on English and Dutch vessels, notwithstanding the remonstrances of the French government, who claimed a *renvoy* of the cause as rightfully belonging to them. (*Sir Leoline Jenkins*, vol. ii. pp. 714—754.) But the particular ground of the decision does not appear, and as one charge was for an infringement of the territorial rights of Great Britain, it might have turned on that point.

bring in the proceeds of a ship and cargo which had been sold, after a condemnation as lawful prize, but from which sentence there was an appeal (on a subject distinct from the question whether prize or not, which was not disputed), *Held* not a ground for prohibition to that Court, for the monition neither interferes with nor defeats any vested rights. *Camden (Lord) v. Home* (in error), 6 Bro. P. C. 243., 2 H. Black. 533., 4 T. R. 382., 1 H. Black. 475.

15. On application to the Court of Queen's Bench for prohibition against the Court of Lords Commissioners of Appeal in Prize Causes, in respect of a decree allowing interest against prize agents, *Held* that the jurisdiction of the Prize Court exercised over the proceeds and over the agents who had been in possession of those proceeds was well founded. *Willis v. The Lords Commissioners of Appeal in Prize Causes*, 5 East, 22.

16. By 54 Geo. 3. c. 93. s. 10. the Lords Commissioners of Appeal in Prize Causes are empowered in any case of appeal before them to order at their discretion, at the requisition of either party, the proceeds of any prize, the subject of such appeal, or of any part or parts thereof, to be paid into Court by the agent for such prize, to be laid out or disposed of at the discretion of the Court on any application made by either party for that purpose.

### 3. Of the Prize Court of Admiralty.

#### (a) Generally.\*

17. Where there has been a false capture of goods at sea the Admiral has jurisdiction; but if they be brought to land, the Common Law has equal authority, and the cause may be brought in either Court at the plaintiff's election. *Anon.* (1690), 12 Mod. 16.

18. The British Court of Admiralty, as a Prize Court, is properly and directly a Court of the Law of Nations; but it is bound to take notice of British Acts of Parliament, and the flagrant breach of British municipal laws, with respect to the transactions of British subjects coming incidentally before it. *The Walsingham Packet, Bell*, 2 C. Rob. 83.

19. The authority of the High Court of Admiralty in prize matters extends over the whole of his Majesty's dominions, and

operates in every port belonging to them. *The Carel and Magdalena, Brandt*, 3 C. Rob. 58.

20. Prize or no prize is a matter not triable at Common Law, but altogether appropriated to the jurisdiction of the Admiralty. *Thompson v. Smith* (18 & 19 Car. 2.), Sid. 320.; *Brown v. Franklyn* (10 W. 3.), Comb. 474.

21. A privateer, having letters of marque against the Dutch, seized an Ostend instead of a Dutch ship, and having brought her into port, proceeded against her for adjudication as prize in the Prize Court of Admiralty, where she was decreed to be no prize; upon which the owner took proceedings there against the captor for damages in respect of such seizure and detention. On application for a prohibition, on the ground that the suit was for the recovery of damages for an injury done in port, for which an action lay at Common Law, *held* that the original act being a capture at sea, and the bringing into port, in order to have it condemned as prize, but a consequence thereof, not only the original wrong, but also the attendant results, should be tried in the Admiralty, and prohibition refused accordingly. *Turner v. Cary & Neele* (1667), 1 Lev. 243.; S. C. 1 Sid. 367.

22. The jurisdiction over all matters of prize and every thing consequent on a capture belongs exclusively to the Court of Admiralty. *Lindo v. Rodney*, 2 Dougl. 613. n.

23. A prohibition to the Judge of the Prize Court to stay proceedings in a question of prize or no prize refused. *Exp. Lynch*, 1 Mad. 15.

24. The Prize Court of Admiralty has jurisdiction over cases of seizure as prize, although the same may have been effected after the time prescribed for the cessation of hostilities by a treaty of peace. *The Harmony, Norman*, 2 Dodson, 78. Prohibition in such a case refused. *In re Harmony*, Coop. C. C. 325.

25. When a capture is made at land by the assistance of a fleet, all questions concerning the property captured belong exclusively to the jurisdiction of the Admiralty Court. *Lindo v. Rodney*, 2 Dougl. 613. n.

26. Courts of Admiralty and Courts of Prize are all liable to the controlling authority which the Courts of Westminster

\* 14. The prize jurisdiction of the High Court of Admiralty extends to Ireland and Scotland: the Admiralty Courts of those countries never had a

prize commission sent to them. *Evidence of Sir John Nicholl before the Select Committee of the House of Commons on Admiralty Courts*, p. 19.



Hall have from time to time exercised for the purpose of preventing them from exceeding the jurisdiction given to them, the general ground of prohibition being an excess of jurisdiction, when they assume to act in matters not within their cognisance. *Grant v. Gould*, 2 H. Black. 69. 100.

27. The Court of Prizes in the Admiralty is a different jurisdiction from the ordinary Court of Admiralty, called the Instance Court, and is governed by different rules. *Lindo v. Rodney*, 2 Dougl. 613. n.

28. Where a vessel is prosecuted in the Court of Exchequer as forfeited for smuggling, and in the Admiralty as a prize, the former Court will not grant a prohibition on the application of the owner, nor compel the captor (also the seizor) to elect. *Attorney-General v. Appleby*, 3 Anst. 863.

*See post*, Nos. 148, 149.

(b) *To what extent excluding proceedings at Common Law.*

29. The question of prize or no prize, or by whom taken, cannot be tried at Common Law, but must be decided by the Judge of the High Court of Admiralty; and the jurisdiction depends, not upon the locality, or upon the parties, but upon the nature of the question, which is such as cannot be tried by any rules of Common Law, but by the general Law of Nations, which is there administered by forms best adapted to the subject of its jurisdiction and the interests of the parties. *Mitchell v. Rodney* (in error), 2 Bro. P. C. 423.

30. Where a ship is *bonâ fide* seized as prize, the owner cannot sustain an action in a Court of Common Law for the seizure, though she be released without any suit being instituted against her, his remedy, if any, being in the Court of Admiralty. *Faith v. Pearson*, 2 Marsh. 133., 6 Taunt. 439., 4 Camp. 357., Holt. 113.

31. No action at Common Law lies for false imprisonment, where the imprisonment was merely the consequence of taking a ship as prize, although the ship be subsequently restored. *Le Caux v. Eden*, 2 Dougl. 594.

32. No action at Common Law lies for goods taken as prize on shore. *Lindo v. Rodney*, 2 Dougl. 613. n.

33. A Frenchman domiciled at Lisbon consigned a cargo, his property, to Nantes, under the name of a native Portuguese who acted as neutraliser. The ship having been taken and brought into an English port, the

cargo was libelled in the Court of Admiralty as prize, where the Portuguese, with the privity of the Frenchman, claimed it, and it was decreed to be delivered up to him as neutral property: *Held*, that an action at law could not afterwards be maintained by the Frenchman against the Portuguese to recover the proceeds of the cargo. *De Metton v. De Mello*, 12 East, 234., 2 Camp. 240.

34. If the Prize Court condemn a captured vessel as prize to his Majesty, the sentence, while unappealed from, is conclusive on the Common Law Courts and on all the world that no ally or other person is entitled to a share in it. *Duckworth v. Tucker*, 2 Taunt. 7.

35. If an ally actually cooperate in effecting a capture he cannot recover any proportion of the prizes in the Common Law Courts of this country; he must sue in the Prize Courts. *Ibid*.

(c) *As to proceedings pending appeal and after lapse thereof.*

36. By 33 Geo. 3. c. 66. s. 31., on appeal from the sentence of any Court of Admiralty concerning any ship or goods seized as prize, such Court may, on application of the captor or claimant, cause the same to be appraised and take security for the full value thereof, and thereupon cause the property to be delivered up to the party giving such security, notwithstanding the appeal, and if there shall be any sufficient objection to the giving or taking such security, the Court may order the sale of such property, and the proceeds shall be invested.

37. By 54 Geo. 3. c. 93. s. 9. the Judge of the High Court of Admiralty may, in all cases wherein any sentence of condemnation pronounced in that Court is appealed from, at the time of serving the inhibition thereon or at any time thereafter during the pendency of the appeal, and without prejudice to the appeal, assign the agent or agents, or other persons in whose hands the proceeds of the prize may be, at the prayer of either party, or of the Treasurer of the Navy or of Greenwich Hospital, or his or their deputies for such purpose, to bring into and leave in the registry the nett proceeds of the sales of such prize, deducting a reasonable sum to be allowed by the Judge for the expenses of defending the appeal, and such proceeds shall be deposited, in case the parties agree thereto, in some public securities at interest in the names of the Registrar or Deputy-Registrars and

of such trustees as the parties shall appoint and the Court approve, and in case either party shall refuse his consent the party applying shall have such proceeds so invested, he giving sufficient security to the Court to answer to the other party for any loss or deficiency that may be occasioned thereby, in case such other party shall be ultimately pronounced entitled thereto.

38. By 54 Geo. 3. c. 93. s. 6. the Judge of the High Court of Admiralty, in all cases either in the then present or any former war in which the regular time of appeal has elapsed or in which the appeal has been determined, or any Judge of any Vice-Admiralty Court abroad to which any certificate from the Judge of the High Court of Admiralty shall be transmitted in any such case, at the time of appeal being elapsed without further prosecution, together with an order of distribution thereon, may make an order for production and verification of accounts and for distribution of the proceeds, and enforce the same by the process of the Court, by monition and attachment on the agent or agents in whose hands the proceeds may be lodged, or any other person to whom such proceeds may have been committed, and likewise by further process against the sureties of such agent, and all Courts of Vice-Admiralty are thereby empowered and required to enforce on all persons within their jurisdiction all such orders and all other orders of the High Court of Admiralty, whether relating as prizes or to any matter or thing relating thereto within their respective jurisdictions.

(d) *Over booty.*

39. The Court of Admiralty has jurisdiction (not under the Prize Act) over the proceeds (as being prize) of booty taken by a conjoint British and allied force and brought within British territory. *Quære*, Has not the Court the same jurisdiction where the property is not brought within the jurisdiction? *French Guiana*, 2 Dodson, 164. 169.

40. In cases of prize taken in a conjoint expedition with an ally, the jurisdiction of the Courts of either country thereon is not determined by the majority of force belonging to such countries employed on such expedition. Either party, whatever his interest, unless very inconsiderable, may proceed in the competent Court of either kingdom. *Ibid.* 163.

41. By 3 & 4 Vict. c. 65. s. 22. jurisdiction is given to the Court of Admiralty

to decide all such questions concerning booty of war or of the distribution thereof as shall be referred thereto by the Crown, and the Court shall proceed therein as in cases of prize, and the judgment of the Court be binding on the parties concerned.

(e) *As to Vice-Admiralty Courts.*

42. Questions of capture arising in remote parts of the world should be decided there, in the Vice-Admiralty Courts instituted for the purpose; but the High Court of Admiralty of England possesses a concurrent jurisdiction, and circumstances may occur rendering it advisable that the proceedings should be instituted in the latter Court. A prize directed to proceed to England and coming into roads *in itinere* will not induce a legal obligation to take proceedings in the Court having local jurisdiction. *The Hunter, Rogers*, 1 Dodson, 483.

43. A vessel captured on her outward voyage by reason of irregularity of licence, and decreed to be restored by the Vice-Admiralty Court of Gibraltar, was captured again on her homeward voyage by another vessel and proceeded against on the same grounds in the High Court of Admiralty; restitution decreed, on the ground that the question had already been determined by a competent tribunal, from which no appeal lay to the High Court of Admiralty. *The Bennet, Younghusband*, *Ibid.* 180.

44. The regulations of the Prize Act introduce some modifications of the law on the head of subsidiary interference by the High Court of Admiralty in matters arising out of proceedings in Vice-Admiralty Courts, the inference from which would seem to be that such powers did not belong to this Court independently of such statutable provisions. The Court, therefore, would be incurring a risk to carry such interference further, or in other matters than directed by such statute. *La Madonna della Lettera*, 2 Hagg. 291.

45. An application of a claimant, not exhibiting any letters of request from the Vice-Admiralty Court, to enforce a monition (decreed by the High Court of Admiralty doubting its jurisdiction, but permitting that question to be raised upon the enforcement of the monition) against a captor, for payment of a small sum for demurrage, in which he had been condemned some years previously by such Vice-Admiralty Court, but out of whose jurisdiction he had removed into that of this Court, being resident in

England, refused, and the party monished dismissed. *Ibid.* 289.

*See ante*, No. 38.

#### 4. Of Vice-Admiralty Courts.\*

46. Previous to the act 41 Geo. 3. c. 99. the Vice-Admiralty Courts in the West Indies had only a local jurisdiction in matters of prize, confined to the adjudication of property brought within their respective limits. *The Carell and Magdalena, Brandt*, 3 C. Rob. 58.

47. But by the above act jurisdiction was granted to each of those Courts over all prizes carried into any British colony, and over all persons concerned therein, the same as if brought into any port of the island or colony where such Courts are held. *Ibid.*, 3 C. Rob. Appendix 16.

48. Questions of capture arising in remote parts of the world should be decided there in the Vice-Admiralty Courts instituted for the purpose; but the High Court of Admiralty of England, as having an universal jurisdiction, possesses a concurrent jurisdiction with such Courts, and circumstances may occur rendering it advisable that the proceedings should be instituted in the High Court of Admiralty. A prize directed to proceed to England, and coming into roads *in itinere*, will not induce a legal obligation to take proceedings in the Court having the local jurisdiction. *The Hunter, Rogers*, 1 Dodson, 483.

49. By 54 Geo. 3. c. 93. s. 23., in all cases of condemnation in any Vice-Admiralty Court, where there is no claimant or appellant before the Court, the Judge may at the request of the captor compel the agent to give security at the time of condemnation for the due distribution of the proceeds, or for the transmission thereof to the treasurer of Greenwich Hospital, or to such persons in England as the captors shall appoint, under the directions of the Court, for the purpose of being distributed in England.

#### (5) Of foreign belligerent Courts of Prize.

##### (a) Generally.

50. An English ship having been taken by a French man-of-war, carried into France,

and there condemned by a French Court of Admiralty as a Dutch prize, was afterwards purchased of the Frenchman by an English merchant, who brought her to England, where the former owner brought an action of trover for the ship against the purchaser. These facts being found specially, the Court of Queen's Bench gave judgment for the defendant, and *Held*, that the ship being legally condemned as a Dutch prize, the Court should give credit to the sentence of the Court of Admiralty in France, and take it to be according to right, and that it should not therefore examine its proceedings, for it would be very inconvenient if the Courts of one kingdom should by peculiar laws correct the judgments and proceedings of the Courts of another kingdom; and sentences in Courts of Admiralty ought to bind generally, according to the *jus gentium*. *Hughes v. Cornelius* (34 Car. 2.), Carth. 32., Skin. 59., 6 Vin. Abr. 534.

51. A British vessel was taken by the French and carried into a Spanish port, the papers were transmitted to France, and a sentence of condemnation passed, the ship still lying in the Spanish port: *Held*, that the condemnation was valid, as France and Spain were allies in the war against England, and both Governments might be presumed to authorize any measures to give effect to their arms. The Court distinguished the case from that of *The Flad Oyen*, where the vessel lay in a neutral port. *The Christopher, Slyboom*, 2 C. Rob. 209., 2 Park on Ins. 718.

52. A sentence of condemnation of a prize taken by a French privateer and carried into Spain by a French Court sitting there, Spain being then a belligerent ally of France in the war against Great Britain, is valid, and such condemnation proceeding on the ground of the property being enemy's and British is conclusive in an action on a policy against the underwriter by the assured, who had insured it as Danish, which in fact it was, Denmark being then neutral. *Oddy v. Bovill*, 2 East. 473.

##### (b) Sitting in neutral countries.†

53. Condemnation of prize must be by

\* 15. The 41 Geo. 3. c. 96. makes provision for the better regulation of his Majesty's Prize Courts in the West Indies and America, and of appeals therefrom.

† 16. A British ship was captured by a French privateer and condemned in Holland as a prize, by the Commissary of Manne, appointed by the

French republic, then in possession of Holland as a French province: having been bought by Prussians and brought to Scotland, the original owner claimed her; *Held*, that she was lawfully condemned as prize, and the claim of the former owner rejected. *Wake v. Hillary and Son* (1801), 12 F. C. 556., Mor. No. 1. App. Prize (Scotch Rep.).

the adjudication of a tribunal of competent jurisdiction, exercising its functions within the belligerent country making the capture; and it is contrary to the ancient usage and universal practice of mankind, that condemnation should be made by a tribunal or individual pretending to be set up for this purpose by the belligerent in a neutral country. *The Flad Oyen, Martensen*, 1 C. Rob. 140.; S. P. *Havelock v. Rockwood*, 8 T. R. 268.

54. Courts of Prize must exercise their functions within the countries to which they respectively belong; and no nation can station a Prize Court within the territory of a neutral, or confer any authority to exercise the functions of a Prize Court upon a person in a neutral country. A British prize ship taken by the French and carried into Bergen, in Norway (then neutral), where she was condemned by the French consul and afterwards sold, *Held* not to have been legally condemned, and the ship restored accordingly to the former owner on salvage. *The Flad Oyen, Martensen*, 1 C. Rob. 140.

55. The sentence of a Court of Admiralty sitting under a commission from a belligerent power in a neutral country will not be recognised in our Courts, and that is to be considered a neutral country for this purpose, in which the forms of an independent neutral government are preserved, although the belligerent may have such a body of troops stationed there as in reality to possess the sovereign authority. *Donaldson v. Thompson*, 1 Camp. 429. (Ellenborough); and see *Smith v. Surridge*, 4 Esp. 25., 2 Park on Ins. 717.

56. Where a ship had been captured, carried into Norway (a neutral port), and condemned before a French Consul; *Held*, that the sentence was invalid, and not helped by a subsequent capture from the purchaser, and subsequent sentence in a French Court. Restitution to the former British owner, but allowance for amelioration granted. *The Kierlighett, Spoerewig*, 3 C. Rob. 99.; S. P. *The Prosperous*, (December, 1800,) 2 Park on Ins. 717, 718.

57. But where the vessel so condemned is a foreign ship, the Court will not interfere to decree restitution to the original owner, inasmuch as that would involve the relation between foreign states. *The Cosmopolite, Mathieson*, 3 C. Rob. 333.

58. Defective title by reason of a condemnation in a French Consular Court sitting in a neutral port, *Held* to be cured by a subsequent sentence of condemnation, on a rehearing in the nature of an appeal in the Conseil des Prises at Paris. *The Falcon, Atkins*, 6 C. Rob. 194.

(e) *Where the prize was lying in a neutral port.\**

59. The true principle is, that a sentence of condemnation passed upon a prize ship lying in a neutral port is invalid. *The Henrick and Maria, Baar*, 4 C. Rob. 43. (affirmed on appeal; see note to *The Schoone Sophie, Ariens*, 6 C. Rob. 139.); *The Comet, Adams*, 5 C. Rob. 285.

60. But the High Court of Admiralty having practised against the true principle in relation to British captures felt bound to give the same effect to sentences passed by the enemy, until the practice should be restored by the Superior Court to the proper purity of the principle. Condemnation. *The Henrick and Maria, Baar*, 4 C. Rob. 43.

61. Such a sentence on a prize lying in a neutral port, and upon depositions taken before the magistrate of the neutral country, *Held* to be included in the same principle. *La Purissima Conception, Aneres*, 6 C. Rob. 45.

62. A British prize was taken by the French and condemned in the Vice-Admiralty Court of Dunkirk. There was a discrepancy in the evidence, as to whether she was lying in a neutral port or remained with the fleet at the time of condemnation. The ship was decreed by the Court of Admiralty to be restored to the former owner, and sentence affirmed on appeal to the Delegates. *The Constant Mary, note to The Kierlighett, Spoerewig*, 3 C. Rob. 97.; *Tremoulin v. Sands*, Carth. 423.

63. A British ship taken by the French was condemned in a Spanish (neutral) port, where it was sold to a Spaniard, and afterwards brought to England, where, on the breaking out of hostilities against Spain, it was seized on behalf of the Crown. Proceedings having been taken on behalf of the former British owners to obtain restitution on the ground of the illegal condemnation, the Crown, as standing in the place of the Spanish purchaser, being compelled to acknowledge the illegal con-

\* 17. See the case of *The Herstelder*, where Lord Stowell, having condemned a ship as prize, on hearing that she was lying in a neutral port,

rescinded his decree. *Note to The Herstelder, De Koe*, 1 C. Rob. 118.

demnation, consented to restitution to the former British owners, which was decreed accordingly. *The Nostra Signora de los Angelos, Saragossa*, 3 C. Rob. 287.

### III. WHAT IS PRIZE OF WAR—ET CONTRA.

#### 1. *As dependent on the time of capture.*

##### (a) *Captures made prior to notification of hostilities.*

64. Cargo of warlike stores bound to an enemy port with a contingent destination to this country, taken prior to the notification of hostilities, restored; but *semble*, that condemnation would have followed if it had been taken subsequently to such notification. *The Sarah and Bernhardus*, Hay & Marriott, 175.

65. Naval stores laden on board neutral vessels, but before the time limited by his Majesty's notification of hostilities, and destined for his enemies, decreed under such circumstances to be sold to his Majesty for the benefit of the proprietors. *The Maria Magdalena*, Ibid. 250.

*See post*, Nos. 108. 143. 145.

##### (b) *Captures made after the conclusion of a treaty of peace.*

66. A British ship and cargo taken by an American privateer within the time allowed for hostile capture by the treaty of peace, and retaken after the expiration of that period, decreed to be restored to the American captor. *The Somerset, Metherell*, 2 Dodson, 56.

67. A British ship and cargo retaken from the enemy, restitution whereof was decreed to the owners, with salvage to the recaptor, *Held* on application of the original captor (*quondam* enemy), and proof of such recapture having taken place after the time specified in a treaty of peace concluded between the two countries, to be lawful prize to the original captor, and to be delivered to him accordingly; former decree pronounced null and void. *The Harmony, Norman*, Ibid. 78.

#### 2. *As dependent upon the question of ownership.*

##### (a) *Neutral claims to—where pronounced for.*

68. An American-built ship laden with powder and guns, claimed by Dutch owners and bound for St. Eustatia, a Dutch settlement, having Dutch officers on board, proceeding to the rebel American army, restored, notwithstanding proof

of a probable ulterior destination to an American port, and that the master was unable to verify the claim as to proof of ownership; but it was proved that the ship had been in the claimants' possession for sixteen months previously, that they had done acts of ownership, and that the master only took the command of the ship eight days before she sailed, and the Court *Held* that every presumption arose in point of law from possession and acts of ownership. Captor's expenses allowed. *Hendrick and Alida*, Hay & Marriott, 96.

69. Claim of neutral and other owners of prizes seized as enemy's property pronounced for. *The Concordia, Wise*, 1 C. Rob. 119.; *The Einigheden, Molsen*, Ibid. 323.

70. A neutral vessel trading from the colony of the enemy, seized on suspicion of being enemy property, restored as being neutral property, and, under the circumstances, without further proof. *The Margaretha Magdalena, Predborn*, 2 C. Rob. 138.

71. A shipment made in an enemy's country to a neutral, *Held* upon evidence adduced on further proof to be sufficiently proved to be neutral property. Restitution. *The Adelaide, Bose*, 3 C. Rob. 281.

72. Sentence of condemnation in the Vice-Admiralty Court of Bermuda of a ship as enemy property, principally on the ground of the shipper being resident in the enemy's country, reversed, on the ground that the shipper was proved to have fairly accounted to the neutral owner for the whole freight and earnings of the vessel. Restitution. *The Titus, Cushing*, 1 Acton, 18.

73. Articles for the private use of a neutral sovereign, though forming part of a cargo liable to condemnation, are to be restored, conformably to that comity which is observed in such cases by Courts of Prize. *The Speculation, Kohl*, Edwards, 184.

##### (b) *Neutral claims to—where pronounced against.*

74. Cargo claimed by neutral asserted owners condemned, on the ground of insufficiency of proof and fraud in subduction of papers. *La Prosperité*, or *The Wellfuren*, Hay & Marriott, 295.

75. Claim of neutral and other asserted owners of prize pronounced against, and vessels condemned as enemy's property. *The Vigilantia, Gerritz*, 1 C. Rob. 1.; *The Young Jacob and Johanna*, Ibid. 19.; *The Endraught, Bonkins*, Ibid. 21.; *The Staat Embden, Jacobs*, Ibid. 26.; *The Magnus*,

*Sorensen*, Ibid. 91.; *The Bernon*, *Dunn*, Ibid. 101.; *The Danckbaer Africaan*, *Smit*, Ibid. 107.; *The Herstelder*, *De Koe*, Ibid. 113.; *The Juffrow Anna*, *Grefson*, Ibid. 124. a.; *The Juffrow Elbrecht*, *Meintes*, Ibid. 126.; *The Hoop*, *De Vries*, Ibid. 129.; *The Two Brothers*, *M. Clousky*, Ibid. 131.; *The Argo*, *Smit*, Ibid. 158.; *The Vrouw Hermina*, *Jonker*, Ibid. 163.; *The Adriana*, *Fitzpatrick*, Ibid. 313.; *The Conqueror*, *Tate*, 2 C. Rob. 383.; *The Citade de Lisboa*, *Oleivera*, 6 C. Rob. 358.

76. Where a claim is preferred by a neutral in respect of cargo taken as prize, total defect of evidence on his part is, as a general rule, a legal ground of condemnation, especially where the party has been indulged with the opportunity of supplying the defect; but the Court avoids, as much as possible, giving a decision on mere defects. *The Magnus*, *Sorensen*, 1 C. Rob. 35.

77. Claim of neutrals to ship and cargo proceeded against as prize pronounced against, and ship and cargo condemned, not as being enemy's property, but on the ground that the proof of ownership adduced was so suspicious and fraudulent as to be insufficient for the substantiation of their claims, and to exclude them from the opportunity of further proof. *The Rosalie and Betty*, *Gebhardt*, 2 C. Rob. 343.

78. Claim of a neutral to cargo seized by the Marshall of the Admiralty as prize pronounced against, the proofs being so improbable, insufficient, contradictory, and complicated, as to be inconsistent with a fair case. Cargo condemned accordingly. *The Conqueror*, *Tate*, Ibid. 303.

79. Claim of a neutral, in which further proof was ordered, which falsified the former case set up, pronounced against. Condemnation. *The Neptunus*, *Monwold*, 3 C. Rob. 80.

80. Claim of a neutral, under an asserted transfer at the beginning of the war, for a ship seized sailing under neutral colours, but which appeared to have continued in the same course of trade as formerly, viz. to and from enemy ports, and under the management of the former master, as to whom it was made one of the stipulations of the bill of sale that he should not be removed, pronounced against, the interest of the neutral claimant being held not to have been sufficiently proved. Condemnation. *The Omnibus*, *Fennes*, 6 C. Rob. 71.

81. A ship, taken sailing under the Portuguese flag and pass, and claimed under the Portuguese treaty of free ship free

goods, having been transferred by the enemy to the Portuguese owner, under circumstances falsifying the whole transaction, held that the cargo, the property of the same owner, was involved in the fate of the ship, as enemy property, but *aliter* if it had been the property of another person not privy to the latent defects of title in the ship. Ship and cargo condemned accordingly. *The Flora*, *Baptista*, Ibid. 360.

82. A ship was sold by an American (neutral) to a Spanish (enemy) merchant in Buenos Ayres; and, for the security of the purchase, which was covenanted to be paid in London, (20,000 dollars at the first instalment,) the Spaniard shipped a quantity of tallow consigned to the agents and correspondents of the American in London, and delivered the bills of lading to him, to be forwarded to those agents; and they were accordingly forwarded, together with instructions from him to the same agents to procure insurances on the contents. When received, the proceeds of the tallow over and above 20,000 dollars, the insurance, &c., were to be paid over by the consignees in London to the supercargo on board the ship: Held that the lien which the former owner might have retained on the property for the purchase-money was not such an interest as would support a claim of property in a Court of Prize. *The Marianna*, *Posadillo*, Ibid. 24.

83. A shipment of colonial produce of the enemy colourably transferred to a neutral merchant, and bills of lading given for the amount, condemned as enemy property, affirming the decision of the Vice-Admiralty Court of Halifax. *The Hope*, *Dobell*, 1 Acton, 43.

(c) *Unclaimed neutral property — how dealt with.*

84. A neutral ship and cargo for which no claim was given, the master refusing to claim, decreed to be restored to the owners whensoever they should claim and make the usual affidavits of property. *De Jonge*, *Joslers*, *Hay & Marriott*, 148.

85. A neutral Dutch ship decreed to be restored whenever a legal claim should be given for the same. Restitution accordingly on a claim afterwards given. *The Jonge Juffers*, *Reetsma*, Ibid. 272.

5. *As dependent on the trade engaged in.*

(a) *Generally.*

86. Any trade contrary to the general Law of Nations, though not tending to, or

accompanied with, any infraction of the belligerent rights of that country whose tribunals are called upon to consider it, may subject the vessel employed in that trade to confiscation. *The Fortuna, Verissimo*, 1 Dodson, 85.

87. The Court will, on proof of intention of illegal trading, hold the legal consequence to be the same as if proof of actual illegal trading had been adduced. *Le Louis, Forest*, 2 Dodson, 338.

88. A neutral is at liberty to put his goods on board a merchant vessel though belonging to a belligerent, subject nevertheless to the rights of the enemy, who may capture the vessel, but who has no right, according to the modern practice of civilised states, to condemn the neutral property, notwithstanding a rescue be attempted by the crew of the captured vessel; but *aliter*, if he put his goods on board a belligerent armed ship. *The Fanny, Louison*, 1 Dodson, 448.\*

89. A neutral ship may carry enemy's property from its own to the enemy's country without being guilty of a breach of neutrality, provided that neither the voyage nor commerce be of a hostile description, or otherwise expressly or impliedly forbidden by the law of this country, although such ship, in consequence of carrying enemy property, is liable to detention, or to be carried into British ports for the purpose of search. *Barker v. Blakes*, 9 East, 283.

(b) *Of the ship — how affecting the cargo.\**

90. A ship having been condemned for illegal trading, part of the cargo, the legality of which was questionable, condemned likewise, as being the property of the owners of the ship. *The Julia, Ropes*, 1 Dodson, 170. n.

*See ante*, Nos. 81. 88.

(c) *Fraud as to the ulterior voyage.*

91. Proof of concerted gross fraud of claimants as to the ulterior voyage held not to work a condemnation where there was no ground for suspicion as to the property or the legality of the present voyage; but expenses of captors allowed, though seizors after restitution by former captors. *The Eliza and Katy, Claasby*, 6 C. Rob. 185.

(d) *Other trading.*

92. A British subject cannot come be-

fore a Court of Prize to claim property taken in a course of trade forbidden by the laws of his country. Condemnation in such a case. *The Etrusca*, 4 C. Rob. 462. n.

93. Property condemned in consequence of the inadmissibility of such a claim passes not to the individual captor, but to the Crown. *Ibid.*

94. The Court of Prize, though properly a Court purely of the Law of Nations, has a right to notice the municipal law of this country in the case of a British vessel which, in the course of a prize proceeding, appears to have been trading in violation of that law, and to reject a claim for her on that account. *The Fortuna Verissimo*, 1 Dodson, 84.

95. A British subject cannot set up a demand in a British Prize Court, though a Court of the Law of Nations, for an interest which he cannot sustain without showing himself to have acquired it in violation of the municipal law of this country; but the same principle is not to be applied to foreigners. *The Recovery, Webb*, 6 C. Rob. 348.

96. An American vessel having been seized for a breach of the Navigation Laws, in trading from the British settlements in India, and proceeded against for such offence in the Prize Court, held that that branch of the Court of Admiralty, as being a Court more immediately of the Law of Nations, had not jurisdiction to entertain such a plea of offence. Restitution to the neutral claimant decreed accordingly. *Ibid.* 341.

97. Claim of British subjects for portion of cargo taken on a voyage from Batavia to Holland, as purchased under a sub-contract with a neutral merchant who had originally contracted with a Dutch enemy (the Dutch East India Company) for the purchase and importation of a large quantity of Batavian produce into Holland, pronounced against, as a trading adventure in violation of the East India Company's charter, and within the prohibitions of the 33 Geo. 3. c. 52., passed for the protection of the East India Company's privileges. *The Cornelis and Maria, Zortkief*, 5 C. Rob. 28.

98. A sub-contract entered into by certain neutral merchants in a time of peace, and not in contemplation of war, for Batavian produce purchased by Dutch mer-

\* 18. A neutral cargo on board an armed vessel of the enemy is not liable to condemnation as prize

of war. *The Atalanta*, 3 Wheaton's (AMERICAN) Rep. 409.

chants under a contract with the Dutch Asiatic Company, and to be brought to Amsterdam and there sold, *held* not to be invalid. Restitution accordingly to the neutral claimants. *The Vrow Ann Catharina, Mahts*, Ibid. 161.

99. *Quere*, can British subjects trade with Spanish ports (being allies) in the possession of French troops (enemies), except by permission, and under the inspection of their own government? *The Bennett, Younghusband*, 1 Dodson, 182.

100. A neutral ship's meeting, by agreement, a British vessel, for the purpose of receiving gunpowder and arms, is illegal, though the latter should have a licence to export them for the purpose of trade. *Gibson v. Mair* (1813), 1 Marsh. 39.; S. P. *Gibson v. Senne* (1817), 1 Stark. 119.; S. C. 5 Taunt. 433.

101. The King having, by Order in Council, declared certain ports in St. Domingo not hostile which had formerly been, but were no longer in the possession or under the dominion of France, though such declaration was made for collateral and limited purposes not covering in its terms the trading in question, yet a trading to such ports from parts of the King's dominions not named in such prior limited orders *held* to be legalised, as if it had been to an ordinary neutral port, by such authoritative recognition of those ports in St. Domingo not being hostile; and that the inference as to the legality of such neutral trade was not rebutted by a subsequent Order in Council opening the trade generally (so as to cover in its terms the particular adventure) to all ports of St. Domingo not in the possession of France; and such trade to neutral ports requiring no licence from the Crown is not restricted by the fact of a British ship carrying a licence for trading to them from Great Britain with a certain specified cargo; but the British trader may, notwithstanding, carry other lawful goods, and insure his whole adventure, and may recover from the underwriter a loss arising from capture by a British cruiser, though induced by the fact of such trading with goods not being covered by the licence which was produced to the captor; for the licence itself not being necessary, the carrying of goods not included in it was no legal cause of seizure, however it might operate upon the question of costs in the Prize Court. *Blackbourne v. Thompson*, 15 East, 81., 3 Camp. 61.

102. The instructions to cruisers not to

molest neutral vessels laden solely with grain, and going to Spain, *held* to cover such a cargo consisting also of some other small articles going from one to another Spanish port. Suggestion of false papers overruled; but the papers being somewhat inaccurate, captor's expenses allowed. *The Nostra Signora de Piedade Nova Aurora, Coelho*, 6 C. Rob. 41.

103. The Order in Council of September, 1803, directing the restitution of cargoes of Spanish wool bound to ports of this country, *held* not to apply to such a shipment ostensibly and according to the private understanding of the shippers to a neutral port, though they had given the master private directions to come to a port of this country, he having sworn that at the time of capture he intended to proceed and was proceeding to the neutral port, pursuant to his papers. On proof that the shippers had given instructions to their consignees at the neutral port that in the event of the master bringing the vessel there the cargo should be carried on in the same or another ship to this country, *held* that such a circuitous ulterior destination could not be considered in law as one identical consignment. Claim rejected. *La Flora, Klein*, Ibid. 9.

104. A neutral ship laden with salt sailed from the Island of St. Martin's, bound for a port in the Baltic; but through stress of weather, as asserted, put into Oporto, where the cargo was sold, but not landed, so as to break the continuity of the voyage, and a quantity of cork was taken on board for the account of a Portuguese merchant, with which the ship proceeded to a port in Holland, on her voyage to which she was captured. The salt was condemned as a shipment within the restrictions of the Order in Council of 7th January, 1807, prohibiting trade by neutrals between the ports of France and her allies; and this order *held* to extend to the confiscation of a vessel engaged in such a trade, and lending herself to the exigencies of the enemy. Ship condemned accordingly (reversing the decision of the High Court of Admiralty). The cork restored to the Portuguese neutral claimant. *The Die Jungfer Charlotta, Otma*, 1 Acton, 171.

105. The conveyance of passengers for hire *held* as equivalent to the conveyance of goods for freight, and therefore to be a trading within the prohibitions prescribed by the Orders in Council of 26th April, 1809. *The Rose in Bloom, Olcott*, 1 Dodson, 58.



106. A foreign ship and cargo condemned, under the Order in Council of 31st May, 1809, restricting trade to Heligoland to British ships. *The Fortuna*, *Brasch*, Edwards, 236.

107. A Prussian (neutral) ship and cargo, trading between Prussian ports, proceeded against and condemned under the Order in Council prohibiting trade between ports from both of which the British flag was excluded. *The Speculation*, *Koht*, Edwards, 184.

108. A neutral ship captured on her return from a whaling voyage, and proceeded against under the Order in Council respecting fishing voyages from and to ports from which the British flag is excluded, decreed to be restored, the voyage having been commenced before the Order in Council was issued, and the ship having received no notice thereof. *The Johan*, *Abraham*, Edwards, 275.

*See post*, No. 131.

#### 4. As dependent on the conduct of the claimants.

##### (a) Resistance to captors.

109. Cases may occur in which a neutral ship may be authorized by the natural rights of self-preservation to defend itself from extreme violence threatened by a cruiser grossly abusing his commission; but in all ordinary cases it is his duty to submit to the captor, and rely on his remedy in costs and damages against him. *The Maria*, *Paulsen*, 1 C. Rob. 374.

110. If a neutral master attempt a rescue he violates a duty imposed on him by the Law of Nations to submit to come in for enquiry as to the property of ship and cargo, the consequences of which attempt will reach the property of his owner, and extend also to the confiscation of the whole cargo entrusted to his care; but with an enemy master the case is different: as to him it could only be the hostile act of a hostile person, who was prisoner of war, and who, unless under parole, had a perfect right to attempt to emancipate himself by seizing his own vessel. Resistance by an enemy master held not to affect the cargo, the property of a neutral merchant. *The Catharina Elizabeth*, *Le Grange*, 5 C. Rob. 232.

111. The master and crew of a neutral ship captured held, reversing the decision of the Vice-Admiralty Court of Malta, not to be bound to assist in carrying the vessel into port for adjudication. Resistance to

the captors on the part of the master or crew must be proved to have been actually made in order to subject the vessel to condemnation as for a rescue. Restitution accordingly. *The Pennsylvania*, *McPherson*, 1 Acton, 33.

112. A neutral ship, which had been rescued by her crew from the hands of a lawful cruiser, condemned on the ground of such resistance. *The Dispatch*, *Addison*, 3 C. Rob. 278.

113. An attempt on the part of the neutral master and crew to rescue their ship after capture, and whilst proceeding to a port for adjudication, held to work a forfeiture of ship and cargo. Condemnation accordingly. *The Washington*, *Adams*, 2 Acton, 30. n.

114. An attempt at rescue from captors made by the master and crew of a neutral vessel subjects her to condemnation. *Garels v. Kensington*, 8 T. R. 230., cited in 2 Park on Ins. 759.

115. In a case of attempted rescue by the master and crew, claim for restitution of cargo, on the ground that the owners thereof were not the owners of the ship, and not, therefore, bound by the misconduct of the master, rejected, and ship and cargo condemned (affirming the decision of the Vice-Admiralty Court of Gibraltar). *The Franklyn*, *Forsyth*, 2 Acton, 106.

*See ante*, No. 88.

*See VISITATION AND SEARCH.*

##### (b) Spoliation of papers.

116. Spoliation is condemnation, according to the *jus gentium*, but the lenity of a British Court of Admiralty has never in its usage hitherto gone that length, though it seems that the French Courts have acted up to the principle. *The Hendrick and Alida*, *Hay & Marriott*, 106.

117. Cargo belonging to British merchants on board a neutral ship, and destined for an enemy port, condemned as enemy property, and on the ground of falsification and spoliation of papers. *The Maria Magdalena*, *Ibid.* 247.

118. Neutral masters are not at liberty to destroy papers. If they do so they will not be admitted to explain away such a supposition by saying they were only private letters. Such an act must be considered as a proof of *mala fides*, where which appears it is an universal rule to presume the worst against those who are convicted of it. *The Two Brothers*, *McClousky*, 1 C. Rob. 133.

119. A spoliation of papers is not alone in the British Court of Admiralty a cause of condemnation; but if attended with other circumstances of suspicion, the person guilty thereof shall not have the aid of the Court, or be permitted to give further proof, if such be necessary. *The Rising Sun*, *Wilkie*, 2 C. Rob. 104.

120. Claim of a master guilty of spoliation of papers and adducing an improbable case for portion of cargo of which he asserted himself to be the owner, rejected, and further proof refused to him, but admitted to his owners, claimants for the rest of the cargo; the Court holding them not concluded by his misconduct, except as to freight, an application for which by them was rejected by the Court. *Ibid.*

121. By the law of every maritime Court of Europe spoliation of papers not only excludes further proof, but does *per se* infer condemnation. The lenity of our code has, however, modified the rule to this extent, that if all other circumstances are clear, this alone shall not be damnatory, particularly if the act was done by a person who has interests of his own that might be benefited thereby. Cargo condemned on the ground of spoliation of papers and insufficiency of proof. *The Hunter, Rogers*, 1 Dodson, 480.

(c) *Deviation.*

122. A neutral vessel sailing under the protection of a general British order, *Held* (reversing the decision of the Vice-Admiralty Court of Antigua) not to be rendered fair prize by deviating from her final destination for the purpose of landing a passenger. Restitution accordingly, with costs against the captor. *The Elizabeth, Trip*, 1 Acton, 10.

123. Ship and cargo condemned on the ground of concealment of enemy property in slaves on board (though subsequently acknowledged) and deviation from the asserted port of destination to an illegal port attempted to be justified under a plea of sickness and mutiny of slaves. *The Nancy, Viall*, 2 Acton, 4.

(d) *Assumption of disguise.*

124. It has been the practice of all times to assume disguise for the purpose of imposing upon enemies. States in declared hostility frequently stand in need of the commodities of each other's country, and ships have in all times been permitted to

assume disguise for the purpose of supplying such necessities. *Semble*, that such disguises, assumed for the purpose of deceiving the enemy, are not a ground of condemnation. *The Bennet, Younghusband*, 1 Dodson, 182.

(e) *The covering enemy property.*

125. If a neutral undertake to cover enemy property, the regular penalty of such a proceeding will be confiscation of the whole, including the goods that are really his own, for the Prize Court will not take the trouble, if the neutral will weave a web of fraud, to pick out the threads for him, in order to distinguish the sound from the unsound. *The Eenrom, Fronier*, 2 C. Rob. 1.; *The Susa*, *Ibid.* 251.

(f) *Cases of conjunction with enemy interests.*

126. A rebel American ship, owned by rebel American and British subjects conjointly, and on a colourable and concealed destination, condemned, and British claimant condemned in treble costs. *The Louisa, Hay & Marriott*, 143.

127. Claim of a British owner for cargo on board a rebel American ship rejected. *The Gruel*, *Ibid.* 147.; *Le Perlan*, *Ibid.* 235.

128. Proof of a joint property with the enemy in a shipment subjects the same to condemnation; but if the cargo be innocent it does not necessarily affect the ship. *The Zulema, Alfion*, 1 Acton, 14.

129. On a claim of a former British owner for restitution, on salvage, of a British prize ship taken on a voyage from A. to B., both blockaded ports, no claim having been given for the neutral owner, in whose name the ship was documented, objection that the proceedings were for condemnation as neutral property for breach of blockade, and that no room, therefore, was afforded for the operation of the clause of the Prize Act as to salvage on recapture, as relating only to British property recaptured from the enemy, overruled, in consequence of the discovery of a paper on board suggesting an enemy interest. Restitution accordingly on salvage and expenses. *The Vriendschap, Hansen*, 6 C. Rob. 38.

130. A King's ship having seized a pretended neutral vessel, the commander examined her papers, and found among them a letter disclosing an enemy interest in ship and cargo, which paper he for-

warded officially to the King's Proctor, but permitted the vessel to proceed. She was afterwards again captured, and brought in for adjudication, when the letter was tendered by the captor as evidence, and the admissibility thereof opposed, on the ground of its not having been found on board the prize in question, or any other captured ship (to which the Prize Act limited the evidence of papers in the first instance), and that the ship's papers were sufficiently verified to preclude an order for further proof: *Held* that the provisions of the Prize Act, "if any doubts arise the Court may direct further proof," do not limit the cause of doubt to evidence actually on board, and that the Court is not absolutely concluded by the evidence, but is at liberty to have doubts extrinsic of the evidence. Further proof decreed accordingly, to admit of the captor's bringing in and duly verifying the letter. Condemnation on further proof, no explanation of the letter being offered. *The Romeo*, *Corran*, *Ibid.* 351.

(g) *Other acts amounting to a violation of neutrality — et contra.*

131. A neutral ship condemned on the ground that she had been left altogether in the hands of enemy merchants, by whom she had been employed for seven years successively in the enemy's trade. *Portland and others*, *Farrie*, 3 C. Rob. 52.

132. The grand fundamental duty of neutrality is not to relieve one belligerent from the infliction of his adversary's force, knowing the situation of affairs upon which the interposition of his act would have such a consequence. Neutrals are not bound to enquire very accurately, but if distress of the belligerent is clearly declared, they are bound to take notice of it, and regulate their conduct accordingly. *The Rendsborg*, *Nyberg*, 4 C. Rob. 126.

133. If a neutral act in association with a hostile force, and rely on that force for protection, he is *pro hac vice* to be considered as an enemy. *The Fanny*, *Lawton*, 1 Dodson, 449.

134. A neutral cannot be permitted to aver compulsion and duress of one belligerent in justification of a departure from neutrality, to the prejudice of the other

belligerent. If he sustain a loss from yielding to such duress, he must seek his remedy from the belligerent government imposing it. *The Carolina*, *Nordquist*, 4 C. Rob. 260.

135. An appellant condemned in the costs of an appeal from a condemnation of ship and cargo as enemy property, where it appeared from the evidence that he had entered into a written agreement to avail himself of his neutral character to protect the speculations and property of enemy merchants. *The Falcon*, *Atkins*, 1 Acton, 331.

5. *Cases of British prize ships in the military service of the enemy.\**

136. British subjects were entitled, under the statute commonly called the American Act, to restitution on salvage of their ships recaptured from the rebel American colonists. *The Rebecca*, *Hay & Marriott*, 197.; *The Lucretia*, *Ibid.* 227.

137. Prior to the later Prize Acts, in the case of a British ship, which, having been captured by the French, condemned as prize, and fitted out by them as a ship-of-war, was then recaptured by a British cruiser, it was *held* that a British subject had always a right, not barred by any given duration of time, to restitution of his property, when found in the hands of another British subject, on paying salvage proportionate to the expense, danger, and other circumstances attending the recapture. Restitution accordingly, on salvage. *The Reward*, *Ibid.* 222.

138. A British prize ship, fitted out for war by the enemy, is not to be restored to the former owners. Condemnation. *The Nostra Signora Del Rosario*, *Martinez*, 3 C. Rob. 10.

139. The enemy's putting an additional number of men on board a prize previously armed as a slave ship, without her being commissioned by them as a ship-of-war or further armed, *held* not to amount to a setting forth of the prize as a ship-of-war by the enemy, within the meaning of the Prize Act, so as to defeat the title of the former owner. Restitution to him, on salvage, decreed accordingly. *The Horatio*, *Nelson*, 6 C. Rob. 320.

140. Claim of former owners to restitu-

\* 19. By 55 Geo. 3. c. 160. s. 5., if any British ship taken as prize by the enemy shall be set forth for war by the enemy, it shall, on being recaptured

by British subjects, be condemned as prize to the recaptors. (This, the latest Prize Act, expired with the last war.)

tion, on salvage, of a British prize ship, which had been fitted out and employed by the enemy as a privateer, but was, at the time of recapture, employed merely as a merchant-vessel, and carrying cargo, *held* to be divested, under the exceptive clause of the Prize Act. Condemnation accordingly to the recaptors. *L'Actif, Lorrial*, Edwards, 185.

141. A British vessel taken by the enemy, and employed in their public war-service by a commander of the enemy's navy, *Held* to be "set forth for war" by a competent authority, within the meaning of the Prize Act, 45 Geo. 3. c. 72., and condemned as prize accordingly. Construction of such statute as to "setting forth for war" of a British vessel taken by the enemy, and what will and will not amount thereto. A commission of war is not necessary. *The Ceylon, Mulac*, 1 Dodson, 114.; *The Georgiana, Pitts*, Ibid. 401.

(a) *Cargo on board such ships.*

142. Cargo on board a ship captured by the enemy and condemned as prize as "having been set forth for war" under the Prize Act, decreed to be restored. *The Georgiana, Pitts*, 1 Dodson, 398.

6. *Other cases.\**

143. At the breaking out of a war it is the constant practice of England to condemn property seized before the war if the enemy condemns, and to restore if the enemy restores. This practice is founded on a principle sanctioned by that great foundation of the Law of England, Magna Charta, which prescribes that at the commencement of a war the enemy's merchants shall be kept and treated as English merchants are treated in the enemy's country. *The Santa Cruz, Picoa*, 1 C. Rob. 63.

144. Recapture and donation are in all legal considerations the same, and both equally matters of prize. *Ibid.* 76.

145. Hostilities against the Dutch, which were declared 15th September, 1795, applied retrospectively to property taken during the doubtful state of things that preceded the declaration. Condemnation. *The Herstelder, De Koe*, 1 C. Rob. 113.

146. A British vessel seized and con-

demned during peace by the French authorities for an asserted breach of the Navigation Laws of that country, and afterwards on the breaking out of the war recaptured and brought in for adjudication, condemned to the captor as property of the enemy taken in the ordinary course of prize, and claim of former British owner for restitution on salvage pronounced against. *The Jeune Voyageur, Guerard*, 5 C. Rob. 1.

147. In former wars it has not been usual to capture small fishing boats, but this rule was a rule of comity only not of legal decision. If brought in they may be condemned in like circumstances with other vessels. Fishing boats employed in the enemy's trade condemned as prize accordingly. *The Young Jacob and Johanna, Visser*, 1 C. Rob. 20.

148. An enemy's vessel was stranded on the Goodwin Sands and the cargo sent on shore. It was afterwards arrested by the Court of Admiralty under proceedings instituted there by the master, who claimed it as Prussian property. The cargo having been condemned, the Lords reversed that decision on appeal, holding that the Admiralty Court had no jurisdiction over the goods proceeded against, there having been no act of capture on the high seas founding the character of prize. *The Ooster, Eems*, note to *The Two Friends, McDougal*, Ibid. 284.

149. Proceeds of cargo deposited by the master with his agent at an enemy port, by whom bond was given to abide adjudication thereon, *Held* not amenable to the jurisdiction of the Prize Court of Admiralty. *The Charlotte*, note to *The Hoffnung, Hardrath*; 6 C. Rob. 386.

150. Cargo on which an enemy had a lien to a certain extent, *Held* subject to confiscation to that extent, although no part of the cargo could be specifically proved to be actually that to which he might be entitled, and though the lien was acquired under a written agreement upon a balance of accounts. *The Josephine, Chilton*, 1 Acton, 313.

151. In the capture of a factory of the Dutch East India Company by the joint forces of the British East India Company and his Majesty's Navy, sums which had been advanced by the Dutch governor on behalf of the Dutch Company upon contracts for supplying the factory with manu-

\* 20. As to what property on land shall be deemed prize of war, see the 2d sect. of 55 Geo. 3. c. 160., (which act, however, expired with the last war).

factures, *Held* (affirming the decision of the High Court of Admiralty) to be proper subjects of condemnation as prize to his Majesty. The British Company having possessed itself of such sums under an assignment to its agent, executed by the governor of the Dutch factory, having first failed in an action to recover the same in their capacity of captors, *Held* bound to account with the Crown for the sums so recovered with interest. The dependance of a suit in Chancery in this country between the two companies respecting this property, which suit had been interrupted by the war, *Held* no bar to such adjudication. *Capture of Chinsurah*, 1 Acton, 179.

152. There is no distinction between the public and private property of an absolute monarch. Money, therefore, in the hands of a banker of a prince whose territories had been conquered by the British troops, may be recovered on an information by the Attorney-General from the banker. Such a claim preferred on behalf of the Crown, and after the termination of the war, pronounced for. *Advocate-General of Bombay v. Amerchund, note to Elphinstone v. Bedrechund*, 1 Knapp, 329.

See PRIVATE ADVENTURE.

7. *Exemptions from condemnation under treaties, where allowed — et contra.*

153. A neutral Dutch ship with enemy cargo on board, laden prior to hostilities, restored, the goods being privileged by treaty. No costs given. *The Yonge Helena*, Hay & Marriott, 141.

154. Enemy cargo which being on board a neutral Dutch ship was claimed as protected by the treaty of Copenhagen of 1670, alleged to make free ships free goods, condemned as not protected by the treaty. *Les Quatres Frères*, Ibid. 170.

155. Enemy cargo on board a Dutch (neutral) ship restored, as privileged by the treaty with Holland. Costs and damages given against captor. *The Vander Leye*, Ibid. 184.; *The Zelden, Rust*, Ibid. 220.

156. The Portuguese treaty that free ships should make free goods and enemy ships enemy goods, *Held* not to apply to a case in which Portuguese property had been put on board a Spanish ship prior to the declaration of hostilities with Spain. Restitution. *The Marianna, Posadillo*, 6 C. Rob. 29.

157. A stipulation by treaty between two

foreign states that free ships should make free goods does not warrant such a certain conclusion as that "enemy's ships should make enemy's goods." Claim of salvage for the recapture of cargo otherwise neutral on board British ships rejected, and recaptors' expenses refused. *The Cygnet, Kidd*, 2 Dodson, 299.

158. *Quere*, how far under the treaty with Portugal of 1654, that free ships should make free goods, that privilege can be extended to the carrying of enemy's property out of a blockaded port. This question not distinctly arising, the cargo being documented as the property of Portuguese neutral merchants, though claimed generally and not verified in the depositions, restitution decreed, the Court declining, under the circumstances, to order further proof of the property. *The Nossa Senhora da Adjuda, Arango*, 5 C. Rob. 52.

159. A Danish (enemy) ship (an ally of France) seized in the Tagus and claimed by the master for his share therein under the convention of Cintra, which provided for the protection of the property of France and her allies in Portugal, condemned on the ground that the convention had reference to property on land only and not to maritime interests. *The Jonge Josias, Jurgensen*, Edwards, 128.

160. A commutation was paid by the Genoese Government for ships seized by the commander of a British fleet as prize in the port of Genoa. Application made by the Genoese Government for repayment thereof, on the ground that the ships were protected by the terms of the capitulation entered into by the British commander and the Austrian authorities in possession of Genoa at the time, and referred to the Court of Admiralty, rejected, the Court holding the ships not to have been protected by the capitulation. The commutation money, however, under considerations of a public tendency, condemned to the Crown instead of the captors. *Ships taken at Genoa*, 4 C. Rob. 388.

IV. OF PRIZE TAKEN IN CONJUNCT EXPEDITIONS.\*

161. A land force has no interest in prize properly so called; what a land force takes by itself is not prize but booty. Property taken by a conjoint expedition

\* 21. The 2 W. 4. c. 53. consolidates and amends the laws relating to the payment of army prize, money.

of land and sea forces is not within the operation of the Prize Acts. *Genoa and its Dependencies*, 2 Dodson, 446.

162. That is clearly a conjunct expedition which is directed by competent authority, combining together the actions of two different species of force for the attainment of some common specific purpose. Co-operations amounting and not amounting to a conjunct expedition considered. *Booty in the Peninsula*, 1 Hagg. 47.

163. Motion on behalf of the Sicilian ambassador for a sum of 833*l.*, proceeds of prize property taken (amongst other prize property adjudicated upon) by the conjoint British and Sicilian forces, and on its transmission to this country directed by the Lords of the Treasury to be paid into the registry of the Court of Admiralty, to be paid to him on behalf of the Sicilian forces claiming to be entitled thereto, refused as irregular, there being no proof of the property having been adjudged to be prize, and that the whole was due to the Sicilians, in exclusion of the allied British forces. *Anglo-Sicilian Captures*, 3 Hagg. 192.

164. A grant of money having been made by the Crown, in lieu of booty taken by the combined operation of land and sea forces, to the commander-in-chief of each force as trustees for the whole force, such trustees are bound to act conjointly, not one for the navy and the other for the army, and if they delegate their trust to agents, such agents, though severally appointed, must likewise act conjointly, and therefore share equally in the 5 per cent. commission in the sum to be distributed. In a nomination of agents under such circumstances there should be a conjoint and concurrent appointment, and a conjoint and concurrent distribution by them. *The Taragona*, 2 Dodson, 487.

165. By 2 *W. 4. c. 53. s. 29.* in all conjunct expeditions of his Majesty's land and naval forces, after the adjudication of every ship with the arms, ammunition, tackle, apparel, and furniture thereof, and the goods and other effects on board, and of every other matter or thing subject to such adjudication, which shall be captured in any road, haven, river, or creek belonging to any such thereinbefore mentioned fortress or possession or otherwise, as lawful prize to his Majesty in any of his Majesty's Courts of Admiralty or Vice-Admiralty which shall be duly authorized to take cognisance of the same, and which Courts are by this act required to proceed therein to lawful adjudication; the share of his Majesty's army shall, as soon as ascertained, be paid over to the treasurer of Chelsea Hospital.

166. By *ss. 30. and 31.* the registrars of the High Court of Appeals of the High Court of Admiralty and of the Courts of Vice-Admiralty respectively, are to transmit quarterly to the treasurer of Chelsea Hospital a list, &c., of all prizes taken and adjudged in any conjunct expeditions with the navy and army; and by *s. 32.* they are to transmit also copies of all letters of attorney delivered to them with the particulars of prizes.

#### V. OF THE RIGHT TO—

##### 1. *Of the Crown.*

##### (a) *Generally.\**

167. Prize is altogether a creature of the Crown; no man has or can have an interest in it but what he takes as the gift of the Crown. This is not a peculiar doctrine of the English constitution: it is universally received as a necessary principle of public jurisprudence by all writers on the subject.

\* 22. It is laid down in the Black Book of the Admiralty, that anciently the fleets fitted out were the ships of the subjects. Of the prizes taken by them, the King had one fourth, the Lord High Admiral two fourths, and the captors the remainder. After the establishment of a royal navy, it was established that, in the case of capture by ships in the pay of the King, the King should have one fourth, the owners of the ships another fourth, and the other moiety be divided among the captors, the Admiral taking, if present, the share of two men in each vessel, if absent, of one only; and in the case of capture by private ships not in the King's pay, the King should claim no part, but the captors take the whole, allowing, however, to the Admiral as much as the share of two men. But these proportions were occasionally varied at the King's

pleasure, and Sir Matthew Hale states that in his time the admiral had the third of goods taken by private men-of-war as his fee, but in right of the King. In the time of the usurpation the distribution of prize was settled by the ordinances of 1648, *c. 12.*, 1649, *c. 21.*, and 1650, *c. 28.* and *c. 33.* The stat. 4 & 5 *W. & M.* gave to privateers four fifths of the cargo and the whole of the vessels, and to King's ships one third. In Queen Anne's time the Crown had half, and the Lord High Admiral his tenths, of all prizes, save of those taken by privateers, who had the whole interest in prizes captured by them. The entire beneficial interest was first given to the captors, whether belonging to the Royal Navy or private ships-of-war, by the stat. 6 *Anne, c. 13.* (1708), commonly called the Cruisers' Act. *Abb. Sh. 588.*, *Hay & Marriott, 25.*, 5 *C. Rob. 185.*

*Bello parta cedunt reipublicæ.* *The Elsebe, Maas*, 5 C. Rob. 181.

168. It is an elementary principle of prize law, that all prize belongs to the state, in monarchies to the sovereign. By modern policy this interest has been granted out to persons of certain descriptions acting under the authority of public commissions. *The Melomane, Colas*, *Ibid.* 41.

169. All prize arising from capture is *primâ facie* in the Crown, and is derived from the Crown under different acts of the legislature. Immediately on letters of marque and reprisal issuing, the modern mode of proclaiming war, an Order in Council disclaims on the part of the Crown all interest in captures after condemnation and final adjudication to the captors. *The Thetis*, 3 Hagg. 231.

170. The real proprietor of the species of property captured *jure belli* is the government of the capturing party. It may grant out the property to its captors, as the British Government and other states do; some, however, do not. If two states join their forces for a common capture, the property captured belongs to both proportionally. If one of such states has granted out its interest to its captors, and the other has not, the proportion of the value passes to the captor in one instance, and remains to the state in the other. *French Guiana*, 2 Dodson, 157.

171. The right of the Crown to a proportion of proceeds of property of the enemy surrendered by capitulation to a joint British and Portuguese (allies) force, pronounced for, and the proceeds, which had been transmitted to this country, directed to be brought into the registry. *Ibid.* 151.

172. The right of the British Government to a proportion of proceeds of prize taken by a British and Portuguese force conjointly cannot be affected by the strongest proof that the Portuguese Government held the opinion that the British Government had no such right. *Ibid.* 168.

173. The right of the Crown being once vested by virtue of seizure of the prize, no act of the governor of a colony, the seizer in the capacity of an officer of the East India Company, could defeat that title. *The Richmond, Brattel*, 5 C. Rob. 336.

174. Public property ceded by capitulation, but not taken possession of by captors, and afterwards seized by a privateer, *Held* to belong to the Crown and not to the privateer. *Thorshaven and its Dependencies*, Edwards, 102.

175. Rebel goods have always been condemned as droits of Admiralty when taken by non-commissioned persons. The act of parliament declaring the rebellion of the American colonies, and enacting forfeiture to the King of the goods of such colonists as if the same were the goods of open enemies, *Held* not to vary this rule or to give a preferable title to such prize to the King *jure coronæ*, as for a forfeiture, and not as prize of war. *The Dickenson, Merton, Hay & Marriott*, 47.

176. A ship was seized in port for the King, as for a forfeiture by reason of importation of prohibited goods; she was also seized in port by the officers of the Admiralty as a droit and prize of war; *Held*, that the importation was a forfeiture to the Crown antecedent to the seizure for the Lord High Admiral. *The Third of June 1709, cited in The Dickenson, Merton*, *Ibid.* 18.

177. By the Order in Council of 6th March, 1665-6, (for the settlement of the rights of the Lord High Admiral), it is declared that all ships, either men-of-war or merchantmen, which shall voluntarily come in upon revolt from the enemy, or shall be driven or forced into port by the King's men-of-war, and also such ships as shall be seized in any of the ports, creeks, or roads of England or Ireland before any declaration of war or reprisals by his Majesty, shall belong unto his Majesty.

178. The true rule respecting the rights of the Lord High Admiral is to be taken from the Order in Council of 1665. From the tenor of that order the distinction between the rights of the Admiral and of the Crown is founded in this; that when vessels come in not under any motive arising out of the occasions of war, but from distress of weather or want of provisions, or from ignorance of the war, and are seized in port, they belong to the Lord High Admiral; but where the hand of violence has been exercised upon them, where the impression arises from acts connected with war, from revolt of their own crew, or from being driven in by the King's ships, they belong to the Crown. This distinction has been invariably observed from the time of the order. *The Maria Françoise, Le Bouch*, 6 C. Rob. 282.

179. An American ship belonging to subjects of America, then colonists of this country, but in a state of revolt, was seized by the crew on her voyage, and brought into a port of this country as prize, where she was also seized by a man-of-war, and

proceeded against and condemned under the statute, which enacts, that the ships and goods of the inhabitants of such rebellious colonies shall become forfeited to the King, as if the same were the goods of open enemies. The prize was then claimed by three parties; 1st, on behalf of the King *jure coronæ*; 2d, for the King in his office of Admiralty, as a droit; and, 3d, by the captor in port. *Held*, that the case was analogous to the capture of an enemy's ship by non-commissioned captors, and prize condemned accordingly as a droit to the King in his office of Admiralty. *The Dickenson, Merton, Hay & Marriott*, 46.

180. Certain Dutch ships were forcibly detained at the Cape of Good Hope, before declaration of hostilities against Holland. On the part of the Admiralty they were claimed as droits, on the ground that at the surrender the port became a British port under the protection of the Lord High Admiral, and that any seizure of enemy's property made in it after that time is to be considered as made in his name. But the Court, finding that they were seized preparatory to hostilities, *Held* that the seizure related forward to such hostilities, and condemned them as prize *jure coronæ*. *The Gertruyda, De Vries*, 2 C. Rob. 211.

181. After a seizure and restitution by the first captors, and a second seizure by officers of the Admiralty instituting new proceedings, the King is not to be considered, on the ground that he is the fountain of all prize, as the original captor. *The Mercurius, Gerdes*, 1 C. Rob. 81.

*See antè*, No. 93.

(b) *To what extent divested by grants to captors.*

182. The King holds the office of Lord High Admiral in a capacity distinguishable from his regal character, and although he is the fountain of all prize, he has conveyed away his interest in it to various persons, to the commanders and crews of his own ships, to his other subjects by letters of marque, and to the Lord High Admiral of England. The interest of prize is thus vested in the captors, who may, against the wish of the Crown, proceed to adjudication. *The Mercurius, Gerdes*, 1 C. Rob. 81.

183. The right granted to captors to seize all ships of the enemy does not bar the Crown from any farther exercise of its power with respect to seizure; for after

that right to seize all ships is given, the Crown can exempt as it sees fit. The Crown, which declares general hostilities, can limit their operation; it can except individuals; it grants particular passes; it exempts particular classes of the enemy's ships, notwithstanding the right thus given to seize all ships. *The Elsebe, Maas*, 5 C. Rob. 173.

184. So neither does the right granted to captors to seize, by the mere act of seizure bar the Crown in the exercise of its power with respect to proceeding to adjudication. The duty of proceeding to adjudication is enjoined upon captors, that they may not make seizures without bringing the property to the notice of the proper tribunals, in order to prevent the right of seizure from degenerating into piratical rapine. But the same obligation which the Crown imposes in general, it may release in the particular instance, and it may at any time before adjudication release the property to the claimant, without the possibility of opposition on the part of the captor. *Ibid.*

185. Case of condemnation to the Crown under considerations of a public tendency, instead of to the captors. *Ships taken at Genoa*, 4 C. Rob. 388.

186. The Crown may for reasons of state release a prize as against the interest of the captors. The captors bring in their prizes subject to such interposition on the part of the Crown, but such interposition is and ought to be of rare occurrence. *The St. Ivan, Wacklin*, Edwards, 377.

187. *Semble*, that the Crown at any time before distribution may alter or revoke a grant of prize money. *Alexander v. Wellington, Duke of*, 2 Russ. & M. 35.; and see *Brummell v. McPherson*, 5 Russ. 263.

188. The grant to the Lord High Admiral, whatever it conveys, carries with it a total and perpetual alienation of the rights of the Crown, and nothing short of an act of parliament can restore them. But the grant to captors is nothing more than a mere temporary transfer of the beneficial interest. As against captors standing on such an interest, the construction is the same as it would be against the Crown itself, because they cannot be pronounced against without pronouncing in effect that a perpetual alienation of the Crown's right to prize taken under the circumstances of war had already been made to the Lord High Admiral. *The Maria Françoise, Le Bouché*, 6 C. Rob. 282.



## 2. Of captors.\*

189. The title deeds on which only the claims of captors can be constructed are the Prize Act and the proclamation. The proclamation confers the interest in prize "on our ships-of-war and those which have taken our letters of marque." The Prize Act is much to the same effect, adding in the last act "mariners, &c. on board our "hired armed ships." These descriptions of vessels are with those acting under letters of marque the only parties that can maintain a legal interest in prize. *The Melomane, Colas*, 5 C. Rob. 41.

190. All title to sea prize must be derived from commissions under the Admiralty, which is the great fountain of maritime authority, and a military force on land is not invested with any commission so derived. A capture, therefore, at sea made by such a force on land enures to the benefit of the Lord High Admiral. *The Rebeckah, Thompson*, 1 C. Rob. 235.

191. A ship captured by naval commissioned forces from an island having no military establishment upon it, *Held* to be prize to the actual captor, and not a droit of Admiralty. *Ibid.* 227.

192. The commissions of privateers do not extend to the capture of private property on land, a right which is not granted even to King's ships. The Prize Act expressly limits the operations of privateers to fortified places and fortresses, and to property waterborne. *Thorshaven and its Dependencies*, Edwards, 113.

193. An enemy ship, which sailed prior to the declaration of hostilities, was subsequently thereto captured and brought in, but afterwards released, and, whilst lying where she had been brought in, was again seized and brought to adjudication; claim of the Lord High Admiral to the prize as a droit of Admiralty, on the ground of its being a seizure in port subsequent to hostilities, pronounced against, as not within the meaning of the grant to the Lord High Admiral under the Order in Council of 1665,

the prize not having been forced in by warlike operations, nor driven in by circumstances connected with the war or in ignorance of the existence thereof. Condemnation to captors. *The Maria Francoise, Le Bouch*, 6 C. Rob. 282.

194. A very ancient grant has given to the Lord High Admiral the benefit of all prize taken by persons not commissioned, and it lies on the individual captor in every case to show the authority by which he is entitled to take for his own benefit. *The Melomane, Colas*, 5 C. Rob. 41.

195. No right to prize is by any of the Prize Acts vested in the captors before condemnation. *Camden (Lord) v. Home (in error)*, 6 Bro. P. C. 243., 2 H. Black. 533., 4 T. R. 382., 1 H. Black. 475.

## VI. OF THE DISTRIBUTION OF—

1. Who entitled to share—*et contra*.†

196. The title to prize money must be decided by the King's proclamation for its distribution. *Sutton v. Johnstone* (1786), 1 T. R. 508.

197. The proclamation and the Prize Act, under which alone captors are entitled to prize, lay down two requisites as necessary to confer a prize interest, *viz.* that the officer should be on board at the time of capture, and that he should also be an officer belonging to the capturing ship. The mere performance of the duties of an officer would not necessarily confer the benefit and emoluments of that office, to vest a prize interest, unless the officer had been duly and by proper authority appointed thereto. *The Nostra Signora del Carmen*, otherwise *Le Metis*, 6 C. Rob. 306.

198. On some stations the commanding officer may have a right to appoint to vacancies, and, if the appointment be confirmed by the Admiralty, that confirmation would probably be held to act retrospectively, so as to give the person a legal right to all the profits of his new situation from the time of such appointment. *Ibid.*

199. The commander of a King's ship

\* 23. Before the Prize Act, commonly called the Cruisers' Act, of Queen Anne, in 1708, giving the whole interest of prize to the captors, all prizes taken in port were condemned to the Lord High Admiral as droits, although taken by men-of-war. The *St. Nicholas du Tot* (15 Nov. 1702), and the *John, Royt* (25 Nov. 1702), were so condemned, but after the Cruisers' Act came into operation, such prizes were condemned to the captors, and not to the Lord High Admiral as droits. The *Voor-sighteyheight* (30 July, 1709) was so condemned.

See the cases cited in *The Dickenson, Merton, Hay & Marriott*, 17.; but see also *DROITS OF ADMIRALTY*, cap. 11. sect. 2.

24. See the prize proclamation in the Appendix.

25. An antecedent municipal forfeiture will not oust the right of captors under the grant of prize, but is absorbed in the more general operation of the law of war. *The Sally*, 8 Cranch's (AMERICAN) Rep. 382.

† 26. See the proclamation in the Appendix.

despatched by the Admiral of the station on a short cruise, appointed, in the course of that cruise, an officer on board, lieutenant of the ship, in which office there was at the time a vacancy, and that appointment was, on the return of the vessel, approved of, but not regularly confirmed, by the Admiral: *Held*, that such officer was not entitled to a lieutenant's share in a prize captured by the King's ship on such cruise, as not having been duly appointed to that rank, the commander not having sufficient authority under the circumstances to confer such an appointment on him. *The Nostra Signora del Coro, Alesandro*, 6 C. Rob. 309.; but see the subsequent proclamation of 15th June, 1808.

200. Three ships were associated together on a voyage of discovery, in the course of which two of them were broken up and the crews thereof incorporated into that of the surviving vessel, which also received on board the officers of the two vessels destroyed, and shortly afterwards made a capture after a severe engagement: *Held*, in the Court of Admiralty, that the officers of the two vessels destroyed, and which were on board of the capturing vessel and took part in the engagement, were entitled to share in the prize; but, on appeal, judgment reversed, and such parties *held* not entitled to share, on the ground that they were not officers belonging to the capturing vessel. *The Nostra Signora de Cabadonga*, note to *The Nostra Signora del Carmen*, otherwise *Le Metis*, 6 C. Rob. 305.

201. An appointment by the Lords of the Admiralty of a captain in the navy to be second commander on board a King's ship is valid by their general authority to appoint what officers they think proper for the service, although another was appointed to the first command on board the same ship, and notice was only taken of one captain in the books of regulations for the Navy. Such second captain *held* also entitled to a captain's share of prize under the King's proclamation. *Waterhouse v. King*, 2 East, 507.

202. A captain in the army sent with his company on board a man-of-war (by order of the Admiral of the fleet with which they were sailing), where they acted as marines, is not entitled to share in a prize as captain of marines; but if he were so entitled, he might maintain an action in a Court of Law to recover the prize money. *Mackenzie v. Maylor*, 4 Dougl. 3.

203. In cases of prize, a commander on shore, if the capture take place within the

limits of his station, is considered as the manager of the whole transaction, and, on the property being condemned, is entitled to his proportion. *The Vine, Jay*, 2 Hagg. 2.

204. The captain of a ship actually on board at the time of the capture is entitled to prize money, though under arrest at the time, and though another officer had been sent on board to command the ship. *Lumley v. Sutton*, 8 T. R. 224.; but see *Johnson v. Sutton* (in error), 1 T. R. 493. 784., 1 Bro. P. C. 76.

205. Claim to share in a prize on behalf of a naval officer, a passenger, but doing duty on board the capturing ship as lieutenant, at the request of the commander, verified by a certificate signed by him, rejected on the ground that the claimant was not an officer of the capturing ship at the time, the commander not having so appointed him, nor having, under the circumstances, any sufficient power or authority so to do, there being no vacancy on board in the office of lieutenant at the time. *The Nostra Signora del Carmen*, otherwise *Le Metis*, 6 C. Rob. 302.

206. Invalided soldiers on board a capturing ship are entitled to share in the proceeds of prize. Claim allowed. *The Alert, Nicholls*, 1 Dodson, 236.

207. Supernumeraries and passengers on board a capturing ship are entitled to share in the proceeds of prize, but in the lowest class of distribution. *Ibid.* 339.

208. Mariners separated from their ships as prize masters on board captured vessels share with the ship's crew, and, *vice versé*, the ship's crew *held* entitled to share in prizes captured by them. *The Frederick and Mary Ann, Andriessen*, 6 C. Rob. 213.

209. The prize money gained by an apprentice serving on board a letter of marque ship does not belong to the master of the apprentice, the usage being proved to be that such money is the property of the apprentice (Ashurst, J., *dissentiente*). *Carsau v. Watts*, 3 Dougl. 350.

210. The general principle of the Navy is strongly recognised of holding a strict unity and identity between the several classes of seamen composing a ship's company even in head-money or bounty. *Two Piratical Gunboats*, 2 Hagg. 408.

## 2. Proportions of individual captors.

211. A captain of marines who happens to be on board a man-of-war when she takes a prize, but does not belong to her comple-

ment, shares only as a passenger. *Wemyss v. Linzee*, 1 Dougl. 324.

212. A second captain appointed by the Admiralty, on board and commanding at the time of the capture, is entitled to a captain's share. *Waterhouse v. King*, 2 East, 507.

213. When a prize was taken by a Custom-house cutter, A. bore the commission of mate, but was acting commander on board under an order from the Commissioners of Customs: *Held*, that he was entitled to the commander's share under the King's warrant of the 26th November, 1803, referring to a former warrant of the 4th July in that year, which described the share to be distributable amongst the commanders, officers, and crew of the vessel making the capture as a reward for that service, although the former commander, whose commission as such had before been withdrawn and cancelled by orders of the Commissioners on some supposed misconduct, and who had consequently left the cutter, was afterwards restored and a new commission granted to him bearing the date of his former commission, which was anterior to the capture: *Held*, also, that A. was not entitled to the full share of commander without deducting the share of a deputed mariner who was on board at the time of the capture, but who, at the time of A.'s beginning to act as commander, acted as mate, and was acting as such, and not as a deputed mariner, at the time of the capture, but without any commission or authority to act as mate. *Taylor v. Pitt (in error)*, 8 Taunt. 805., 11 East, 414.

### 3. Between two or more privateers.

214. If a prize be taken by two or more privateers, they are to share proportionably according to the number of men of which their respective crews consist. *Roberts v. Hartley*, 1 Dougl. 311.

### 4. Amongst non-commissioned captors.

215. Under circumstances of considerable merit, the Court awarded the whole proceeds of the prize (2900*l.*) as reward to non-commissioned captors, one-third to

the owners of the vessel and two-thirds to the crew, to be divided according to the usual proportions in private ships-of-war. *The Haase, Dreyer*, 1 C. Rob. 286.

216. On a value of 1321*l.*, the Court awarded 600*l.* to non-commissioned captors, and apportioned such remuneration as follows —

|                                   |   |   |            |
|-----------------------------------|---|---|------------|
| To the owner                      | - | - | £100       |
| To the master                     | - | - | 100        |
| To the mate                       | - | - | 80         |
| To each of 8 seamen, 40 <i>l.</i> |   |   | 320        |
|                                   |   |   | <hr/> £600 |

*The Amor Parentum, Henn*, 1 C. Rob. 303.

## VII. OF THE PAYMENT OF —

### 1. Generally.\*

217. By 54 Geo. 3. c. 93. s. 73. all monies remaining in the registries of the High Court of Admiralty or Courts of Vice-Admiralty, being the proceeds of prize adjudged to the captors, and unclaimed by them after the expiration of twelve months from such condemnation, may, on application of the treasurer of Greenwich Hospital or his deputy, be decreed by the Judges of such Courts to be paid to such treasurer, to be distributed among the captors or their representatives, in like manner, as far as possible, as in cases of distribution by the agents of the captors.

218. By 11 Geo. 4. & 1 W. 4. c. 20. s. 72. prize money, bounty money, &c., not claimed within six years, are declared forfeited, but the Commissioners for the time being executing the office of Lord High Admiral may, on sufficient cause shown, authorize the payment thereof, notwithstanding such forfeiture.

See PRIZE AGENTS.

## VIII. OF THE ASSIGNMENT OF — †

219. By 10 Geo. 4. c. 26. s. 28. assignments, &c., of prize-money, &c., are not to be valid unless they express the consideration money.

220. The Crown in prize grants puts what is strictly bounty upon the footing of

\* 27. By the 54 Geo. 3. c. 93. various provisions are made in ss. 29. to 90. with reference to the payment of prize money; ss. 45. and 46. are, however, repealed by 59 Geo. 3. c. 56., which contains other provisions in lieu thereof.

† 28. By 55 Geo. 3. c. 181. *sched. part 1.*, the

stamp duty payable on every letter of attorney made by any petty officer, seaman, or marine, or soldier serving as a marine, or by the executors or administrators of such person, for receiving prize money, is 1*l.*, and the like duty is payable on every letter of attorney for receiving wages.

right, considering the claim as transmissible to the legal representatives of the claimant deceased before the grant, and subject to his will, &c., like his other property. *Stevens v. Bagwell*, 15 Ves. jun. 139.

221. There is no interest vested in prize before condemnation, but upon condemnation it is considered the property of the captor from the time of the capture. *Ibid.*

222. A captor of a prize may legally assign his share therein before condemnation. *Morrough v. Comyns*, 1 Wils. 211.

223. But the instrument must be in the form prescribed by 26 Geo. 3. c. 63. *Turtle v. Hartwell*, 6 T. R. 426.

224. Military prize when captured is capable of being effectually assigned by the captor before any interest in it has been vested in him by a grant from the Crown. *Alexander v. Wellington (Duke of)*, 2 Russ. & Mylne, 35.

225. By 59 Geo. 3. c. 56. provision is made as to the payment of prize-money, &c. upon orders of petty officers and others, and the form of such orders is set forth, and various regulations made relative thereto.

See PRIZE AGENTS.

#### IX. OF THE CONVERSION OF —

226. If a ship be taken by letters of marque and be not brought *infra præsidia* of that King by whose subjects it was taken, it is no lawful prize, and the property is not altered, and a sale in such a case is void. *Anon.* (17 Car.), Mar. 110., 15 Vin. Abr. 51.

227. Capture without condemnation does not divest the property of the owners while a *spes recuperandi* remains. *Price v. Noble*, 4 Taunt. 123., Abb. Sh. 479.

228. If a neutral state seize and sell a vessel, there being no sentence of condemnation, the property in the vessel is not changed. *Wilson v. Forster*, 6 Taunt. 25., 1 Marsh. 425., Abb. Sh. 27.

229. In the absence of proof of condemnation of a British vessel taken by the enemy and in their possession for a considerable time, the Court is bound to presume that she was regularly condemned. *The Ceylon, Mulac*, 1 Dodson, 116.

230. Donation between enemy and enemy cannot take effect. *The Santa Cruz, Picoa*, 1 C. Rob. 76.

231. A permission by one government to another to seize property within its territory is not a confiscation by the former. *Levi v. Allnutt* (1812), 15 East, 267.

#### X. OF THE LIABILITY OF PARTIES IN POSSESSION OF PRIZE PROPERTY.

232. Motion for a monition to arrest certain goods as prize goods not in the hands of the captor and not fully identified refused, the Court intimating that the claimant must first proceed against the captors, who were responsible to him in the first instance. *The General Wallerstorf, Thaarup*, 1 C. Rob. 328.

233. The captors may make their election in proceedings against persons in possession of proceeds of prize. *The Pomona, McNaught*, 1 Dodson, 27.

234. Where prize goods have been fairly purchased in market overt under a total ignorance of their previous history, the captor might have some difficulty in enforcing process against the purchaser. *Ibid.* 26.

235. Monition decreed at suit of captors against parties then or previously in possession of proceeds of prize, knowing them to be such. *Ibid.* 27.

236. Prize property is of a very sacred nature, and whoever takes it into his possession is responsible to the captors for it. *The Mary, Crofts*, 2 Dodson, 378.

237. Parties receiving proceeds of prize, but improperly permitting deductions therefrom, *Held* to be compellable to make payment to captors of the amount of such deductions. Under the circumstances no interest decreed. *Ibid.*

238. On a return to a monition to bring in cargo that the party had not the cargo in his possession, motion for an attachment, on the ground that the party was in the possession of the proceeds of cargo, refused, and further monition to bring in proceeds decreed. *The Liefde and Jacobine, Croes*, 6 C. Rob. 93.

239. A monition at the suit of the Neapolitan minister calling upon a prize agent to exhibit distribution lists of shares of prizes belonging to the Sicilian officers and crew engaged in a conjunct expedition with an English fleet, and decreed to both as joint-captors, and to pay over the unclaimed shares to the Sicilian minister pursuant to Order in Council of 26th July, 1822, or show cause to the contrary, refused to be enforced, and the agent dismissed, the application being in reference to a transaction of twenty-nine years ago, and the share belonging to the Sicilians having been paid over at the time to a Sicilian authorized agent. *Ca Ira, Censeur, L'Expedition*, 1 Hagg. 251.

See PRIZE AGENTS.

## XI. PRACTICE IN PRIZE CAUSES.

## 1. Generally.\*

240. The Court of Admiralty is at all times studious to observe the simplicity of prize proceedings. *The Sarah, Smith*, 3 C. Rob. 331.

241. A condemnation of prize, passing *sub silentio*, would not weigh materially against a party afterwards objecting to such condemnation. *French Guiana*, 2 Dodson, 156.

242. Proceedings in the Prize Courts are subject to different considerations from those in the Instance Court of Admiralty. *The Athol, Bellamy*, 1 W. Rob. 380.

## 2. In cases of restitution of property of small value.

243. The Court having directed that property under 100*l.* should be restored without the expense of a formal claim, motion to extend the rule to a claim for property valued at 100 guineas refused, the Court holding that it was necessary to confine the indulgence to some definite amount. *The Mercurius, Janssen*, 5 C. Rob. 127.

## 3. As to invocation of proceedings.

244. An objection to the depositions of a claimant in a former case, in which he was owner and master of the vessel, being invoked by the captor, overruled, and evidence admitted accordingly. *The Vriendschap, Barends*, 4 C. Rob. 166.

245. A Danish vessel having been captured, but afterwards restored by consent, and the claims of Danish merchants for the cargo having been pronounced to be sufficiently proved, but hostilities with Denmark having afterwards broken out, the Court accepted the old proceedings, for the purpose only of saving time and expense; and upon them pronounced for the interest of the Crown, and condemned the cargo. *The Nied Elwin, Niess*, 1 Dodson, 54.

## 4. As to the evidence to be taken or received.†

246. It is the duty of captors to produce the master and certain of the crew of the prize, immediately on coming into port, to undergo examination, and to bring in all the ship's papers. *The Dame Catharine, De Workeem*, Hay & Marriott, 244.; and see *Introduction to Godolphin's Adm. Jur.*

247. If the master refuse to deliver up the papers or to be examined, the captors are to make complaint thereof to the Commissioners, who are to report to the Judge; and a monition is to be prayed against the master accordingly. Should he refuse obedience to the monition, attachment and commitment to prison will follow for a contempt, with the loss of costs and damages in case of ultimate restitution. *Ibid.* 244.

248. It is a very ancient and almost fundamental rule of prize proceedings to require that the master of the captured vessel, whether a neutral or enemy, should be brought in for examination. The Court has invariably withheld its sentence of condemnation, even in the clearest cases, where this omission has appeared, until it has been supplied or accounted for in a satisfactory manner. *The Anna, La Porte*, n. 5 C. Rob. 385. g.

249. By Order of Court of 13th March, 1801, it is directed that the cases of all ships detained in the ports, and in which claims have been given, shall be brought before the Court on the two last sittings in each month, which two last sittings shall be exclusively appropriated to such cases, if they are numerous enough to occupy them entirely.

250. Such detained ships, for which claims have been given, as are not brought by the captors before the Court on the said two last sittings in each month in which they shall have been brought in, shall, if restored at any later sittings upon the original proof, be entitled to demurrage, to be computed from the time at which they

\* 29. See the provisions with reference to the practice in prize proceedings contained in the 24th, 25th, and 27th sections, and in ss. 46. to 52. of the 55 Geo. 3. c. 160., the latest Prize Act, (which, however, expired with the last war). See also *Hinchcliffe's Practice of the Vice-Admiralty Court of Jamaica* (anno 1813).

† 30. Prize practice is summary, three or four of the witnesses are taken out of the prize, and are examined on the standing interrogatories, either in London or at the port to which the ship is brought. The ship's papers are then brought in, and on those papers and the answers to the interrogatories, the question goes at once to the Court. In claims,

however, of joint-capture and others, the proceedings assume a more regular form. *Evidence of Dr. Lushington before the Select Committee of the House of Commons on Admiralty Courts*, p. 48.

31. See the Standing Interrogatories to be administered to the witnesses in preparatory in prize cases, in *Appendix to 1 C. Rob.*

32. The Common Law doctrine as to the competency of witnesses is inapplicable to prize proceedings. In Courts of Prize, no person is incompetent merely on the ground of interest; his testimony is admissible, subject to all exceptions as to its credibility. *The Anne*, 3 Wheaton's (AMERICAN) Rep. 425.; and see *The Falcon, Atkins*, 6 C. Rob. 197.

ought to have been brought before the Court in pursuance of the former part of this order.

251. By Order of Court of 5th August, 1803, it is directed that in all cases where the ships of the enemy shall be burnt, sunk, or destroyed, and where proceedings are instituted merely for the purpose of obtaining the bounty money, only one witness shall be examined, and that no copy of the interrogatories be returned annexed to the deposition of the witness.

252. That the same rule be observed in the cases of capture of small privateers under fifty tons.

253. Extraneous evidence offered on the part of the captor is seldom admitted, unless in pursuit of some inquiries suggested by the original evidence. Application to admit same refused. *The Sarah, Smith*, 3 C. Rob. 380.

254. The crew of the prize are in this country the only witnesses to be examined; the depositions of captors are not received. *The Henrick and Maria*, 4 C. Rob. 57.

255. The Court greatly discountenances the admission of affidavits on the part of captors in the first instance. In a case of asserted breach of blockade, affidavits of captors in support thereof rejected, the depositions of the witnesses in preparatory being clear and void of suspicion. *The Haabet, Giertsen*, 6 C. Rob. 54., and note.

256. In prize proceedings the general rule of law is, that on all points the evidence of the claimants alone shall be received in the first instance; and if no doubt arise upon that view of the case, the Court is bound by the general law and by statute to take those points as fully demonstrated. *Ibid.* 55.

257. The captor, in cases of prize proceedings, gives no special allegation. The act of bringing in the prize and proceeding against her alleges her generally to be a subject of prize rights; but the captor is not called upon to state, at the commencement of the suit, the peculiar grounds upon which he contends that she is so. The captor has a right to institute inquiry as to the country to which the prize belongs, under the responsibility of costs and damages, should the inquiry produce nothing; but he has no right, except under peculiar circumstances, to furnish any evidence whatever, no evidence being admissible against the claimant, but such as proceeds from himself, his own documents, and his own witnesses. *The Fortuna, Verissimo*, 1 Dodson, 81.

258. Application on behalf of claimants for examination of a witness (the supercargo having papers in his possession) whom the commissioners had refused to examine, refused, and papers rejected. *The Anna, Beer*, 1 C. Rob. 331.

259. Further evidence is admissible in a prize appeal. *The Diana, Berthé*, 1 Dodson, 102.

*See ante*, No. 140.

*See FURTHER PROOF.*

#### 5. As to condemnation of vessels while lying in neutral ports.

260. A decree of condemnation which had passed on the suggestion that the prize was lying at Plymouth, directed by the Court to be altered, it having ascertained that the prize was lying at a neutral port in Norway, the Court declaring that it would not condemn a vessel lying in a neutral port. *Herstelder, De Koe*, 1 C. Rob. 118. n.

#### 6. Miscellaneous.

261. The 53 Geo. 3. c. 151. directs and regulates the investment by the Registrar of the High Court of Admiralty, and of the High Court of Appeals for Prizes, of suitors' funds exceeding 200*l.*, paid into the registries of those Courts in prize causes, but not in causes under the Instance jurisdiction of the Court of Admiralty.

262. By 54 Geo. 3. c. 93. s. 11., on the application of any party interested in the proceeds of any prize or of any person on behalf of the treasurer of the Navy or of Greenwich Hospital, and on an affidavit of any such party, or any other person, of his belief that there are proceeds of any prize or papers, or books relating thereto, in the possession of any agent or person, whether the said prize shall have been taken in the then present or any former war, the Judge of the High Court of Admiralty may compel the production of the same, and the bringing in of such proceeds, and the answering such interrogatories touching the same as the Court shall approve; and if it shall appear that the party has been cited without sufficient cause, he shall be allowed his costs against the party making such affidavit, or at whose instance he has been unduly summoned.

263. A master should produce all his papers, and more particularly his instructions, and not withhold them till his examination. *The Concordia, Wise*, 1 C. Rob. 120.

264. Application for further time to file

a claim granted. *The Sally, Beetle*, 3 C. Rob. 179.

265. Motion in the Instance Court for warrant of arrest of a ship taken at Curaçoa, and sent to Europe with dispatches to government, without having been brought to adjudication, rejected. Proceedings in the Prize Court directed, to call on the captors to proceed to adjudication. *The George, Dunkin*, 3 C. Rob. 212.

266. An application to take a cargo on bail before adjudication is not granted in the Prize Court but upon consent of the captors. *The Copenhagen, Mullens*, Ibid. 178.

267. A commission of removal of prize having been decreed at the prayer of the actual captor without opposition, a subsequent motion to the Court on behalf of an asserted joint-captor not to permit the commission to issue, rejected, as not showing sufficient grounds for such application, and as not having been made at the time of the decree, the port where the prize was

lying not being a convenient one, and that to which it was proposed to remove her being a convenient one. But *semble* that had the proposed port of removal been unsuitable, or had the actual captor acquiesced distinctly in the bringing in the prize to the then port, the Court would not have refused such an application. *The Sacra Familia, Gusap*, 5 C. Rob. 360.

268. Property condemned as prize directed to be brought into the registry; but the Court, under the circumstances, there having been delay in instituting the claim and misapprehension as to the prize character of the property, forbore to specify any precise time for its being so brought in. *French Guiana*, 2 Dodson, 171.

269. One pound per cent. *held* to be the usual rate of brokerage on the sale of prize goods generally. *The Harregaard, Petersen*, 1 Hagg. 22.

See COMMISSIONERS, LIMITATIONS, REGISTRARS.

## PRIZE AGENTS.\*

I. OF THE JURISDICTION OF COURTS OF ADMIRALTY AND PRIZE OVER—, 335.

II. OF THE APPOINTMENT OF—AND THE CONTINUANCE AND REVOCATION THEREOF, 336.

III. OF THE DUTIES OF—, 336.

1. *As to the registration of their letters of attorney, giving bond, &c.*, 336.
2. *As to the sale of prizes, the distribution of proceeds, and the transmission of accounts thereon*, 336.
3. *As to the investment of prize proceeds pending appeal*, 337.
4. *In cases of prize taken in conjunct expeditions*, 338.
5. *In cases of piratical seizures, bounties, &c.*, 338.

6. *As to the payment of the percentage to Greenwich Hospital by—see GREENWICH HOSPITAL.*

IV. OF THE RESPONSIBILITIES OF—, 339.

1. *Generally*, 339.
2. *For proceeds of prize and other seizures*, 339.
3. *For payment of interest on funds in their hands*, 339.
4. *In other cases*, 340.

V. OF THE REMUNERATION OF—, 340.

VI. OF JOINT AGENTS, 341.

VII. OF THE PROOF OF AGENCY, 341.

VIII. MISCELLANEA, 341.

IX. OF AGENTS IN SLAVE SEIZURES—see SLAVE TRADE.

See AGENTS, REGISTRARS.

\* The acts now in force relating to prize agents are 33 Geo. 3. c. 66., 35 Geo. 3. c. 121., 37 Geo. 3. c. 109., 41 Geo. 3. c. 96., 47 Geo. 3. c. 36., 47 Geo. 3. c. 47., 48 Geo. 3. c. 100., 48 Geo. 3. c. 132., 49 Geo. 3. c. 123., 53 Geo. 3. c. 63., 54 Geo. 3. c. 93. (in part repealed by 59 Geo. 3. c. 56.), 55 Geo. 3. c. 160., 57 Geo. 3. c. 118., 57 Geo. 3. c. 127., 58 Geo. 3. c. 64. (in part repealed, as to pension bills, by 10 Geo. 4. c. 26., and as to orders of petty offi-

cers &c., by 59 Geo. 3. c. 56.), 59 Geo. 3. c. 6., 59 Geo. 3. c. 56. (in part repealed, as to bonds of agents &c. by 1 Geo. 4. c. 85.), 1 Geo. 4. c. 85., 1 & 2 Geo. 4. c. 99., 10 Geo. 4. c. 25., 10 Geo. 4. c. 26., 11 Geo. 4. c. 20. (in part repealed by 2 W. 4. c. 40. & 35.), 1 W. 4. c. 42., 2 W. 4. c. 40. Of these, the principal statutes are the 54 Geo. 3. c. 93. and the 59 Geo. 3. c. 56., which are printed in the Appendix.

## I. OF THE JURISDICTION OF COURTS OF ADMIRALTY AND PRIZE OVER —

1. A prohibition having been applied for from the Court of King's Bench against a decree of the Court of the Lords Commissioners of Appeal in Prize Causes allowing interest against agents, *Held* that the jurisdiction of the Prize Court exercised over the proceeds and over the agents in possession thereof was well founded. *Willis v. The Lords Commissioners of Appeal in Prize Causes*, 5 East, 22.

*See post*, Nos. 11. 33, 34.

## II. OF THE APPOINTMENT OF — AND THE CONTINUANCE AND REVOCATION THEREOF.

2. By 54 Geo. 3. c. 93. s. 13. all appraisements and sales of prizes are to be made by prize agents duly appointed, and the mode of appointment thereof is therein specified.

3. By 2 W. 4. c. 40. s. 19. the powers of the treasurer of the Navy, with reference to the granting and revoking licences to Navy Prize Agents, are transferred to the Lords Commissioners of the Admiralty.

4. Letters of agency are equally applicable to matters of prize and cases of bounty. But parties may grant a power to one agent for the distribution of prize and to another for distribution of bounty. *The Hare, Bertoddy*, 1 Dodson, 478.

5. A letter or power of agency in a matter of bounty *Held* sufficient, and not to be revoked by a subsequent power not applying to bounty. *Ibid*.

6. The duties of an agent do not cease on the employment of a broker. It is his business to know in all cases what becomes of goods captured and brought into Court for condemnation. He ought more especially to be attentive to law proceedings thereon. *The Vreede, Hoffker*, 1 Dodson, 6.

7. Parties have generally a right to revoke the appointment of their agents, but a Navy Agent is looked upon by the Court as a kind of public character, and where he has duly registered his power and has actually intermeddled with the business and conducted it practically to a considerable extent, the Court will not hold his power of agency to be revoked without just cause shown. *The Hare, Bertoddy*, *Ibid*. 479.

## III. OF THE DUTIES OF —

1. *As to registration of their letters of attorney, giving bond, &c.*

8. By 54 Geo. 3. c. 93. s. 14. every person nominated as agent to any prize or for receiving the bounties granted by this act is to exhibit and register in the High Court of Admiralty, or in the respective Courts of Vice-Admiralty where the prizes in respect of which he is agent are proceeded against, his letter of attorney appointing him agent for the purposes aforesaid, and if any person so appointed shall, without sufficient cause, to be approved by the Court, omit or delay so to do for twenty days after the monition has been taken out in the High Court of Admiralty, or in any British Court of Vice-Admiralty, he shall forfeit 500*l.*, and be disqualified from acting afterwards as a prize agent; and by s. 15. any such agent appointed after condemnation is so to register his letter of attorney within twenty days from the date thereof under the like penalties.

9. By s. 18. every prize agent on registering his letter of attorney shall give bond, with two sureties in 5000*l.*, for the due execution of his trust, and if he neglect so to do his letter of attorney shall be void, and he shall be incapacitated from afterwards acting as prize agent.

*See REGISTRARS.*

2. *As to the sale of prizes, the distribution of proceeds, and the transmission of accounts thereon.*

10. By 54 Geo. 3. c. 93. s. 24. \* every agent resident in the United Kingdom shall within six weeks after condemnation in the High Court of Admiralty of any prize for which he is agent, transmit a notice of such condemnation to the treasurer of Greenwich Hospital or his deputy, or to the treasurer or paymaster of the Navy, together with an account of the property according to schedule A. to that act annexed, under a penalty of 500*l.*, unless a reasonable cause be shown to and approved by the Court of Admiralty.

11. By s. 6. the Judge of the High Court of Admiralty in all cases, either in the then present or any former war, in which the regular time of appeal has elapsed or in which the appeal has been determined, or any Judge of any Vice-Admiralty Court abroad in any such case to which any certificate from the

\* The 54 Geo. 3. c. 93. is printed in the Appendix.



Judge of the High Court of Admiralty shall be transmitted at the time of the appeal being elapsed without further prosecution, together with an order of distribution thereon, may make an order for the production and verification of accounts and for the distribution of the proceeds, and enforce the same by the process of the Court, by monition and attachment on the agent or agents in whose hands the proceeds may be lodged, or any other person to whom such proceeds may have been committed, and likewise by further process against the sureties of such agent, and all Courts of Vice-Admiralty are thereby empowered and required to enforce on all persons within their jurisdiction all such orders and all other orders of the High Court of Admiralty, whether relating as prizes or to any matter or thing relating thereto within their respective jurisdictions.

12. By 54 Geo. 3. c. 93. s. 25. every prize agent shall, after the sale of a prize and before the first distribution thereof (or at any time afterwards at the direction of the Court), exhibit in the Court of Vice-Admiralty where such prize was condemned, or in the High Court of Admiralty, and if such prize shall have been condemned in any Court of Vice-Admiralty abroad, shall forthwith transmit to the High Court of Admiralty of England an attested copy of the detailed accounts of the sales of such prizes, duly verified on oath, with attested copies of all vouchers required by the Court, which copies so transmitted to the High Court of Admiralty shall be deposited in the registry thereof, and all parties interested therein shall have liberty to object to the charges and articles therein contained, and the Court shall confirm or disallow the accounts on hearing the objections, and make such further order touching the same and the distribution of the proceeds as the case may require, and any agent not bringing in a copy of his account as directed, or proceeding to distribute without having so exhibited and transmitted a copy of his accounts so verified, or not obeying any order of any Court of Admiralty for distribution, shall forfeit 500*l.*, and be subject to the process of the Court of Admiralty by monition and attachment until he shall have obeyed such order, and the Court may pronounce his bond given on the registration of his letter of attorney forfeited, and levy the penalties secured thereby from the sureties; and by s. 26.

such agent shall transmit another attested copy of such accounts and vouchers to Greenwich Hospital under a penalty of 100*l.*

13. By s. 27. every prize agent shall, ten days before he exhibits his account of sales in the registry of the High Court of Admiralty, cause advertisements to be twice inserted in the London Gazette notifying the day on which such account of sales will be so brought in.

14. By ss. 21. and 22. the commander of the capturing ship shall, on every capture, send to the agent for such capture a list of the persons entitled to share therein subscribed by him, and provision is therein made as to the contents of such list, the verification thereof for the agent's obtaining the same from the Commissioners of the Navy in the event of the commander's omitting so to transmit it for the alteration of such list in respect of errors therein, &c.

15. The 54 Geo. 3. c. 93. directs in s. 29. the public notifications, as to distribution to be made by prize agents after the sale of prizes or receipt of bounties or other monies in the nature thereof payable to his Majesty's Navy, the transmission of copies thereof to the proper authorities, &c., and enacts that the shares of run men and shares not claimed within three months after such notification shall be paid to the treasurer of Greenwich Hospital. The 30th sect. directs the specification in such notification of the time and place of payment, the time during which such place shall be kept open for that purpose, and the same sect. and sect. 31. impose penalties on breaches of such regulations.

16. By s. 33. every agent at the expiration of four months from the notification of distribution of prize is to pay over the unclaimed shares to the treasurer of Greenwich Hospital or his appointees, together with a statement and account on oath of such distribution, and a copy of the distribution list and the original prize list, under the penalties therein mentioned, and by s. 35. a copy of such statement and account is to be transmitted by every such agent to the treasurer of the Navy under the like penalties.

17. By 10 Geo. 4. c. 26. s. 25. prize agents' accounts and vouchers of the distribution of prize money, &c., are to be transmitted to the examiner of prize accounts appointed by the treasurer of the Navy, as heretofore to other parties, under penalty of 100*l.*

3. *As to the investment of prize proceeds pending appeal.*

18. By 54 Geo. 3. c. 93. s. 4. no agent shall be compellable to proceed to the distribution of proceeds of prize, except in certain cases in the act directed, until after the time of appeal has elapsed.

19. By s. 5. if the Judge of the High Court of Admiralty or of the Vice-Admiralty Court in which any prize shall have been condemned, shall certify that the ship condemned sailed under the flag and pass of the enemy, or under any commission of war granted by the enemy, in such case, on the application of the commander of the capturing vessel, the proceeds shall be distributed, and an order of the Court may be obtained at his prayer on the agent to distribute the proceeds before the time of appeal has elapsed, subject to the captors' liability to answer any appeal afterwards duly instituted.

20. By s. 23. in all cases of condemnation in any Vice-Admiralty Court, where there is no claimant or appellant before the Court, the Judge may at the request of the captor compel the agent to give security at the time of condemnation for the due distribution of the proceeds, or for the transmission thereof to the treasurer of Greenwich Hospital, or to such persons in England as the captors shall appoint, under the direction of the Court, for the purpose of being distributed in England.

21. By s. 8. in all cases of condemnation in the High Court of Admiralty where there is no claimant or appellant before the Court, such Court may, at the prayer of the captors, compel the agents, by process of monition and attachment, to vest the proceeds of the property condemned in such public securities as the captors shall elect, there to remain and accumulate for the benefit of the parties interested until the time of appeal shall have elapsed, but subject to the further directions of the Court on the application of the captors; and in all cases of condemnation in any Court of Vice-Admiralty, where there is no claimant or appellant before the Court, such Court may, at the prayer of the captors, direct the property captured, or the proceeds thereof, to be forthwith transmitted to Great Britain, there to be vested in such public securities after being sold (if not already converted by sale) as the captors shall elect until the regular time of appeal shall have elapsed, but subject to the directions of the High Court of Admiralty on the application of the captors.

22. By s. 9. the Judge of the High Court of Admiralty may, in all cases wherein any sentence of condemnation pronounced in such Court is appealed from, at the time of serving the inhibitions thereon, or at any time thereafter during the pendency of the said appeal, and without prejudice to such appeal, assign the agent or agents or other persons in whose hands the proceeds of the prize may be, at the prayer of either party or of the treasurer of the Navy or of Greenwich Hospital, or his or their deputies for such purpose, to bring into and leave in the registry of the said Court the nett proceeds of the sales of such prize (deducting a reasonable sum to be allowed by the Judge for the expenses of defending the appeal), to be invested as thereby directed.

23. By s. 10. the Lords Commissioners of Appeal are empowered in any case of appeal before them, to order at their discretion, at the requisition of either party, the proceeds of any prize, the subject of such appeal, or of any part or parts thereof, to be paid into Court by the agent for such prize, to be laid out or disposed of at the discretion of the Court on any application made by either party for that purpose.

4. *In cases of prize taken in conjunct expeditions.*

24. By 2 W. 4. c. 53. s. 33. every agent resident in the United Kingdom shall, within one month of the condemnation in the High Court of Admiralty of any prize taken in any conjunct expedition of the army and navy, transmit a copy of such condemnation to the treasurer of Chelsea Hospital, or his deputy, with an account of the state at such time of the property condemned, and shall, from time to time, furnish the said treasurer, or deputy, with such other particulars as shall be required of him for the purposes of this act, under penalty of 100*l.*, unless reasonable cause be shown to and approved by the High Court of Admiralty why such information and particulars have not been furnished as aforesaid.

5. *In cases of piratical seizures, bounties, &c.*

25. By 6 Geo. 4. c. 49. s. 2. the bounties by that act conferred on the capture and destruction of pirates are to be paid to the duly authorized agents for the sale of such piratical ships, or for the receipt of such bounties, in case such ships shall have been destroyed, in like manner as by 45 Geo. 3. c. 72. is directed with respect to

the appointment of agents for sale of prizes, and such bounties shall be distributed by such agent amongst such persons, and in such manner and proportions, as his Majesty shall by Order in Council for that purpose direct; and by s. 5. such agents shall exhibit and cause to be registered their letters of attorney in the respective Courts wherein proceedings touching such ships, bounty, or salvage, shall be had, subject to such forfeitures and disqualifications for non-registry as by 45 Geo. 3. c. 72. are enacted.\*

#### IV. OF THE RESPONSIBILITIES OF—

##### (1.) *Generally.*

26. By 54 Geo. 3. c. 93. s. 44. all powers and remedies given by this act to captors against agents to compel them to exhibit their accounts, bring in proceeds, and enforce distribution, &c., may be exercised on behalf of the captors, or a captor, by the treasurer of Greenwich Hospital or of the Navy.

27. By s. 87. the penalties and forfeitures by this act imposed may be recovered by action of debt, &c., in his Majesty's Courts of Record at Westminster, or by monition and attachment in the High Court of Admiralty, unless where any other mode is directed by the act, and if abroad, in any of his Majesty's Courts of Record or Vice-Admiralty there.

28. The Court of Prize will give protection to a foreign prize agent acting with perfect propriety, with due attention to the interests of his principals, and with unimpeachable honesty, and will not enforce from him payment of deficiency of prize proceeds unfortunately invested by him, nor will it notice a guarantee from him to the captors to supply such deficiency. *Sundry Boats or Trabacolos captured in the Adriatic*, 1 Hagg. 294.

*And see the preceding chapter.*

##### 2. *For proceeds of prize and other seizures.*

29. By 54 Geo. 3. c. 93. s. 11. on the application of any party interested in the

proceeds of any prize, or of any person on behalf of the treasurer of the Navy or of Greenwich Hospital, and on an affidavit of any such party or any other person of his belief that there are proceeds of any prize, or papers or books relating thereto, in the possession of any agent or person, whether the said prize shall have been taken in the then present or any former war, the Judge of the High Court of Admiralty may compel the production of the same, and the bringing in of such proceeds, and the answering such interrogatories touching the same as the Court shall approve; and if it shall appear that the party has been cited without sufficient cause, he shall be allowed his costs against the party making such affidavit or at whose instance he has been unduly summoned.

30. An agent of captor is compellable under the Prize Act (in force in 1811), but not prior to that act, to make payment of portion of cargo which had been condemned nine years previously, but of which condemnation the captor had not been apprised through the negligence and inattention of the agent, and the Court would enforce payment from him rather than from one of the bail, the other having since become bankrupt. *The Vreede, Hoffker*, 1 Dodson, 7.

31. A monition decreed accordingly against the prize agent to account for his delay in calling on the bail to answer their recognisance. *Ibid.*

32. Monition decreed on *ex parte* application against an agent at St. Kitt's to bring in the proceeds of a revenue seizure remaining undistributed, together with an account of proceeds, vouchers, and copies of prize lists, and to show cause why he should not pay interest at 14 per cent. per month from the period of the distribution having been unjustly withheld. *Name unknown and two others*, 1 Hagg. 305.

33. An attachment for contempt of Court decreed against a brig-of-war's agent residing in the island of Grenada for non-payment into the mixed Commission Court at Sierra Leone of the proceeds of a slave capture, as directed by a monition from the

\* 2. By the 54 Geo. 3. c. 93. s. 1. such and so many of the clauses and provisions in the 45 Geo. 3. c. 72. contained as relate to prize agents and Greenwich Hospital, are, with parts of other acts, repealed. It is questionable whether the legislature did not mean to refer in the 6 Geo. 4. c. 49. to the 54 Geo. 3. c. 93., instead of to the 45 Geo. 3. c. 72.

3. The section of the 45 Geo. 3. c. 72. referred to in the 6 Geo. 4. c. 49. seems to be the 53d, and not ss. 5. and 6., as stated in the marginal reference.

4. The 53d sect. of the 45 Geo. 3. c. 72. is the same as the 13th sect. of the 54 Geo. 3. c. 93., which see, *supra*.

5. The 54th sect. of the 45 Geo. 3. c. 72. directing the registration by agents of their letters of attorney, and imposing penalties on default thereof, which are by 6 Geo. 4. c. 49. extended to that act, is the same as the 14th sect. of the 54 Geo. 3. c. 93., which see, *supra*.

Court of Admiralty. *The Florida, Provença*, 2 W. Rob. 97.

3. *For payment of interest on funds in their hands.*

34. The Prize Court of Appeals has jurisdiction to decree that one who was co-agent of the captors, in whose hands the proceeds of the prize, after condemnation and sale, were placed, should, after a decree of restitution with interest pronounced against the captors, pay interest on such proceeds while in his hands to the claimant. *Willis v. Prize Commissioners*, 5 East, 22.

35. And the Court of King's Bench will not grant a prohibition to restrain it from executing such a decree, either on the ground that it did not appear on the proceedings below that the agent was a registered agent under the statute 33 Geo. 3. c. 65., or on the ground that the Court below was restrained by s. 32. of the act from decreeing restitution of more than the nett proceeds of the sale awarded upon condemnation, or on the ground that it was not alleged that interest had in fact been made by such agent. *Ibid.*

36. By 54 Geo. 3. c. 93. s. 12. any captor, agent, or other person acquiring or retaining the proceeds of any prize contrary to the provisions of this act, except for reasonable cause to be allowed by the Court in which such prize shall be adjudged or by the High Court of Admiralty, shall pay interest thereon at the rate of 1*l.* per cent. per month for such time as the same shall be so in their custody or possession, besides the other penalties imposed by this act.

37. Prize agents are subject to the order of the Prize Court for interest of money detained in their hands. Interest decreed against them accordingly, and expenses. *The Brig Louis*, 5 C. Rob. 146.

38. Owners of a privateer, acting for themselves and the crew in the sale of the prizes, having neglected to render accounts and delayed the distribution of the proceeds, charged with interest on the balances and costs. *Pearn v. Green*, 1 Jac. & W. 135.

See INTEREST.

4. *In other cases.*

39. By 54 Geo. 3. c. 93. s. 3. agents are not to be liable to claims of run men to prize, unless they shall produce a certificate of the "R" having been taken off, or if they have paid the shares of such parties to Greenwich Hospital.

40. By s. 16. persons not agents sharing in the emoluments of agency business, and

agents permitting the same, are made liable to a penalty of 100*l.* and double the value of such profits.

41. A substituted prize agent *Held* not to be liable, and the assignees of his estate dismissed accordingly. *The Harregaard, Peterson*, 1 Hagg. 23.

42. Attachment against a prize agent, for not having made any satisfactory return to a monition to transmit the undistributed proceeds of a prize, decreed, but ordered to be directed to the Judge of a Vice-Admiralty Court where the party resided, with special instructions to enforce the same at a given time, and under certain circumstances only. *Note to Harregaard, Peterson, Ibid.*

43. A prize agent in this country, who paid to a person residing in Sicily, and constituted agent and receiver by the Sicilian officers and crew (joint-captors), under the sanction and approbation of the Sicilian minister, their share of prizes taken in a conjunct expedition, is absolved from responsibility thereunder; the act of navy agency here is then at an end. An agent is not bound to go over to a foreign country to see that the several parties entitled receive their dues. It is sufficient for him to assign the payment to some respectable and properly authorized party there. *Ca Ira, Censeur, L'Expedition*, 1 Hagg. 255, 256.

V. OF THE REMUNERATION OF —

44. By 54 Geo. 3. c. 93. s. 28. the percentage on agency shall be calculated on the nett proceeds of any prize bounty or salvage, without deducting law charges, and shall not exceed 5*l.* per cent.

45. All agency is *pro opere et labore*, and the Prize Act fixes it at 5*l.* per cent. as a fair average, but it gives nothing where the property is restored. In such cases, therefore, the practice has been for the agent to charge a gross sum, usually fifteen guineas for agency, and something extra for out-port expenses. On objection to report of registrar and merchants, as allowing only twenty guineas agency and out-port charges to prize agents for care of prizes up to restitution; thirty guineas (*viz.* sixteen guineas to agents, and fourteen guineas to out-port agents,) awarded by the Court in consideration of the peculiar circumstances of the case, and of the claimants having been benefited by the capture. *The Asia Grande, Antonio Joachim*, Edwards, 45.

46. A grant of money having been made

by the Crown, in lieu of booty taken by the combined operation of land and sea forces, to the commander-in-chief of each force as trustees for the whole force, such trustees are bound to act conjointly, not one for the navy and the other for the army; and if they delegate their trusts to agents, such agents, though severally appointed, must likewise act conjointly, and therefore share equally in the 5 $\frac{1}{2}$  per cent. commission in the sum to be distributed. In a nomination of agents under such circumstances, there should be a conjoint and concurrent appointment, and a conjoint and concurrent distribution by them. *Tarragona*, 2 Dodson, 487.

#### VI. OF JOINT-AGENTS.

47. A dispute between agents of trustees of bounty, as to their rights as such, referred to the decision of the Court of Admiralty. *Tarragona*, 2 Dodson, 490.

48. A. and B., agents of two vessels, C. and D., joint-captors of two slave ships, E. and F., received as such agents the usual warrants for bounty-money on the slaves, made out in their joint names, and received by A. as the agent of the senior officer. The warrant for the slaves on board the F. was retained by A., and that for those on board the E. was handed by him to B., as the agent of D., and as asserted by B. at his request, and on a calculation and understanding that the amount of such warrant was the gross proportion due to the D. on account of both captures, and should be held by him on D.'s behalf, as the share of that vessel. A. having become bankrupt shortly afterwards, on an application by the treasurer of the Navy as guardian of prize interests, and by the officers and crew of the C., B. held to be bound to distribute the warrant in his possession between C. and D., such asserted calculation and understanding as to the distribution of the warrants being denied, and being held to be insufficiently proved to amount to a severance of interests of the two vessels. Costs decreed out of the fund. *The Vecua*, Gomez, 2 Hagg. 346.

#### VII. OF THE PROOF OF AGENCY.

49. By 54 Geo. 3. c. 93. s. 32. the notifications in Gazettes, &c., therein directed with reference to the distribution of prize-money, are to be sufficient evidence in all

Courts of Admiralty, &c. as to the agency of the parties therein specified as agents.

50. By s. 20. the official copies of prize agents' letters of attorney and bonds therein directed to be transmitted by the registrars of Courts of Vice-Admiralty to and registered by the treasurer of Greenwich Hospital, are to be admitted as evidence of agency.

#### VIII. MISCELLANEA.

51. The term "prize agent" is not now limited to an agent for prize of war, but extends to any distribution among officers and crew. *The Thetis*, 3 Hagg. 342.

52. An agent cannot be allowed to receive proceeds out of the Prize Courts, in opposition to his principal or his assignees; though the Court will protect the agent's interest to the amount of sums expended in prosecuting his principal's claim. *The Franklin*, Goodrich, 4 C. Rob. 404.

53. *Quere*, whether an agent is justified in delaying distribution of prize proceeds to cover the accounts of another unsuccessful capture by the same ship? *The Prinz Henrick Von Preussen*, Sephes, 6 C. Rob. 95.

54. Where persons put their property into the hands of their agent, they must be bound in the Prize Court by the consequences of his acts, as to the property so entrusted, whether they are immediately cognisant of his practices or not? *The Calypso*, Speck, 2 C. Rob. 154.

55. *Quere*, whether a judgment obtained in a Prize Court by the agent of a foreign power, against a native of this country, can be enforced here by the personal representative of such agent? *Obicini v. Bligh*, 1 M. & Scott, 477., 8 Bing. 335.

56. Monies issued by the Crown to an army agent for the pay, subsistence, &c. of officers, and carried in the books of the agent to the credit of the respective officers, but not paid over to them, and not made the subject of any private arrangement with them, continue the monies of the Crown in the hands of the agent, for which he is accountable to the Crown, and may be called back by the Attorney-General, as representing the Crown, even after a lapse of more than thirty years. *Brummell v. M'Pherson* (1828), 5 Russ. 263.

57. By the 10 Geo. 4. c. 26. the duties of the treasurer of the Navy with regard to prize matters and prize accounts are defined and regulated.

## PROCTORS.

## I. OF THE ADMISSIONS OF —

## II. OF THE DUTIES OF —

## III. OF THE RESPONSIBILITY OF —

1. *Generally.*
2. *For costs.*
3. *In cases of illegal charges.*

4. *For permitting their names to be used, or their profits participated in by other parties.*

## IV. OF THE COSTS OF —

1. *Generally.*
2. *Between proctor and client.*

## V. OF AGREEMENTS BETWEEN —

See PRACTICE.

## I. OF THE ADMISSIONS OF —

1. The confession of the proctor of a party contesting suit is sufficient proof of the exhibits of the adverse party. *Hillier v. Milligan*, 1 Lee, 532.

## II. OF THE DUTIES OF —

2. A proctor is not obliged to answer to the seal of a foreign Court, or to subscriptions and seals of a foreign notary, for the law cannot presume him to be consulant of them. *Raymond v. Baron Von Watteville*, 2 Lee, 551.

3. In cases of wages prosecuted on behalf of mariners, the proctor has a public as well as private duty to discharge in seeing that the interests propounded for them are in his apprehension just, or at least doubtful. He is justified in submitting to the decision of the Court a doubt which it is not his province to decide. Such interests are not to be pursued *per fas et nefas*, but they are so pursued if endeavours are used to stifle the fair circumstances of the case, and knowingly to impose a false case. *The Frederick, Hearn*, 1 Hagg. 223.

4. An intercourse for the settlement of a claim is best conducted by the proctors of the parties in person. *Ibid.* 220.

5. The ancient practice of the Court of Admiralty with regard to appearances was originally the same as that of the Ecclesiastical Courts, *i. e.* to require proctors to exhibit proxies from their clients authorizing proceedings. By the modern practice, however, and for a period of at least 200 years past, proxies have been dispensed with, and a proctor is at liberty to commence or defend a suit on his own respon-

sibility, without the production of any proxy. He is bound, however, to produce his parties before the Court when called upon to do so, and the Court will expect that he be duly authorized by some person having an interest in the cause in issue; or that he have a justifiable and strong ground for believing that the person for whom he appears has such an interest. The Court has a right to call upon the proctor, at any period of the cause prior to its being dismissed out of Court, to state not generally, but specifically by name, the whole of the parties for whom he is authorized to appear. *The Whilmine*, 1 W. Rob. 337. 340., 2 Notes of Cases, 216.\*

See PRACTICE.

## III. OF THE RESPONSIBILITY OF —

1. *Generally.*

6. The proctor being the *dominus litis*, is responsible to the Court for the purity of the proceedings. *Mynn v. Robinson*, 2 Hagg. (Eccl.) 195.

2. *For costs.*

7. A proctor condemned in costs arising out of an allegation given by him pleading an admission by the adverse proctor of the justice of his party's demand, which proved to be merely a proposal to recede from strict rights to prevent a suit. *The Frederick, Hearn*, 1 Hagg. 219.

8. A proctor of the Court of Admiralty, who appeared in a salvage suit for the master, owners, and crew of a steam-vessel, the asserted salvors, who were condemned in costs, having been assigned to set forth his client's names, brought in the register of

\* 1. Proctors are to take all practicable care to be assured, as far as circumstances will permit, that they are duly authorized to appear for the indi-

viduals on whose behalf they profess to act. *The Haider*, 1 Notes of Cases, 597.

such steam-vessel, from which it appeared that Mr. R. was sole owner, against whom a monition was thereupon extracted and served, on which he appeared and alleged that the original suit had been instituted without his sanction or knowledge, and he was thereupon dismissed. Motion subsequently to condemn the proctor personally in the costs, opposed by the proctor on the ground that a proxy or the names of his clients should have been demanded at an earlier stage of the cause, granted, and the proctor condemned in the costs of the original suit, as also of the monition against the owner, and of the motion. *The Whilermine*, 1 W. Rob. 335., 2 Notes of Cases, 213.

9. A proctor condemned in costs for improper practices in the conduct of a suit. *Prentice v. Prentice*, 3 Phill. 311.

### 3. In cases of illegal charges.

10. Where a party regularly complains of gross extortion by his proctor, the Court may punish the proctor by suspension or otherwise. *Peddle v. Evans*, 3 Hagg. (Eccl.) 687.

11. On complaint against a proctor of an extortionate charge, the Court suspended the proctor for three months, and condemned him in the costs of the complaint. *In the Goods of Lady Hatton Finch*, *Ibid.* 255.

### 4. For permitting their names to be used, or their profits participated in by other parties.

12. By 55 Geo. 3. c. 160. s. 31. if any proctor of the High Court of Admiralty shall act as such or suffer his name to be in any manner used in any suit, the prosecution or defence of which shall appertain to the office of a proctor, for or on account, or for the profit and benefit, of any person not entitled to act as a proctor, or shall suffer any such person to demand or participate in such profit and benefit, and complaint thereof shall be made to the said Court, and satisfactory proof given, every such proctor shall be struck off the roll of proctors, and be for ever disabled from practising as a proctor, or be suspended from the office, function, and practice of a proctor in the said Court for so long a period as the Judge of the said

Court may deem fit; save as to allowances to the widows or children of deceased proctors by surviving partners, and agreements made between proctors and articulated clerks, whose articles shall have been executed prior to this act.\*

## IV. OF THE COSTS OF—

### 1. Generally.

13. The Court will exert all its powers to restrain proctors from undertaking causes on condition of sharing in the effects or receiving any benefit beyond the payment of fair costs. *Peddle v. Toller*, 3 Hagg. (Eccl.) 291.

14. The Court inclines to discountenance an agreement on the part of the proctor to accept only disbursements from his client, an appellant; as it is the policy of the law to protect both respondents and appellants from useless litigation. *Ibid.* 293.

### 2. Between proctor and client.

15. A client is, under all circumstances, entitled to a detailed bill of costs from his proctor. *Peddle v. Toller*, 3 Hagg. (Eccl.) 297.

16. Bills of costs between a proctor and his client are of Common Law cognisance; the Ecclesiastical Court has no jurisdiction over them. The examination of such bills by the deputy registrar is only by consent and *ex gratia*, and neither party is bound thereby as to the amount. *Peddle v. Evans*, 1 Hagg. (Eccl.) 684., 3 Hagg. (Eccl.) 287.

17. When a detailed bill of costs has been delivered, and long acquiesced in, and payment made after the suit was at an end, and when the party was *inops consilii*, the party will not be entitled to have it referred to the registrar for examination. *Aliter* where the payment took place without a detailed bill, and application for reference to the registrar was made shortly after the delivery of the bill. *Peddle v. Toller*, 3 Hagg. (Eccl.) 296.

18. Where a bill of particulars for business done in the Court of Delegates had been recently delivered, though a general account had been rendered, settled, and paid three years before, the Court, on petition (though such petition contained impertinent matter), directed the bill to be examined by the registrar, in order, *first*,

\* 2. This act generally expired with the last war, but the above regulations are by sect. 76. declared to continue in force after that time.

that the suitor might decide as to proceeding in other Courts to recover the excess, if any; and *secondly*, to found a complaint against the proctor, if the charges were exorbitant or fraudulent; but *held* that it could not take notice of an asserted undertaking that disbursements only, and those not exceeding a certain sum, should be charged, and declined to make an order for the production of vouchers, which, if demanded, are produced as of course before the registrar. On the registrar's report that the bill was just and reasonable, and on the proctor for the complainant declaring he proceeded no further, costs against the petitioner were not given, only because he was almost a pauper. *Ibid.* 283.

19. The Court will not direct the deputy

registrar to allow the solicitor of a party who has appointed a new proctor to be present at the examination by consent of the bill of costs of his former proctor, such an attendance being unusual and unnecessary to the purposes of justice. *Peddle v. Evans*, 1 Hagg. (Eccl.) 684.

#### V. OF AGREEMENTS BETWEEN —

20. The Court of Admiralty cannot take judicial notice of agreements between proctors not appearing in acts of Court. All such agreements are for the cognisance of Courts of Equity, which can alone try their validity and give effect to them. *The Saracen*, 10 Jur. 398., 4 Notes of Cases, 509.

### PROHIBITIONS.\*

#### I. GENERAL CONSIDERATIONS AS TO —

#### II. WHAT A SUFFICIENT GROUND FOR — ET CONTRA.

#### III. OF THE TIME OF APPLICATION FOR —

1. *Before appearance or plea given.*
2. *Before and after sentence.*

#### IV. TO WHOM GRANTED — ET CONTRA.

#### V. OF THE IMPOSITION OF TERMS ON THE GRANT OF —

#### VI. OF THE GRANT OF —

1. *In cases of bonds between part-owners*

*for safe return of their ships — see OWNERS.*

2. *In cases of title to ships — see POSSESSION, TITLE.*

3. *In cases of prize — see PRIZE.*

4. *In cases of ransom — see RANSOM.*

5. *In cases of mariners' wages — see WAGES.*

6. *In cases of wreck — see WRECK.*

#### VII. OF COSTS OF PROCEEDINGS FOR — see COSTS.

See ADMIRALTY.

#### I. GENERAL CONSIDERATIONS AS TO —

1. Courts of Admiralty and Courts of Prize are all liable to the controlling authority which the Courts of Westminster Hall have from time to time exercised, for the purpose of preventing them from exceeding the jurisdiction given to them, the general ground of prohibition being an excess of jurisdiction, when they assume to act in matters not within their cognisance. *Grant v. Gould*, 2 H. Black. 69. 100.

#### II. WHAT A SUFFICIENT GROUND FOR — ET CONTRA.

2. To found a prohibition, the matter must be material. *Butterworth v. Walker*, 3 Burr. 1689.

3. In prohibition the question is whether the Court has a jurisdiction, and not whether the jurisdiction is exercised in a formal and regular way. *Smart v. Wolf*, 3 T. R. 347.; *S. P. Smith v. Lord Mayor*, 6 Mod. 78.

\* 1. As to the ancient law and practice with reference to prohibitions to the Admiralty Court, see *Godolphin's Adm Jur.*, cap. 6. p. 71. *et seq.*



4. If it appear on the face of the proceeding that the Admiralty has not jurisdiction it may be prohibited at any time. *Rex v. Broom*, 12 Mod. 194, 135.\*

5. If a Court of Admiralty proceed in a question where it has no jurisdiction, the Court of King's Bench will grant a prohibition, without imposing any terms. *Velthasen v. Ormsley*, 3 T. R. 315.

6. If the Court below have jurisdiction over the subject matter, a mistake in their judgment is no ground for a prohibition, but is only matter of appeal. *Lord Camden v. Home*, 4 T. R. 397.

7. Where the subject of a suit in an inferior Court is within the jurisdiction of that Court, though in the proceedings a matter be started which is out of its jurisdiction, yet, unless it is going on to try such matter, a prohibition will not lie. *Dutens v. Robson*, 1 H. Black. 100.

8. *Semble*, if an inferior Court adjudge generally that a plea which ousts them of their jurisdiction is insufficient, it will be presumed that the judgment proceeded, not upon a warrant of form, but upon the merits of the plea, and therefore a prohibition will be granted. *Darby v. Cosens*, *Nolley v. Same*, 1 T. R. 552.

9. Where a deed is pleaded, a prohibition may be granted on account of a defective trial, because the Admiralty Court insists on two witnesses to prove it, whereas the Common Law Courts only require one; but the latter Courts cannot interpose unless that defect be shown; for in the Admiralty, as well as in the Ecclesiastical Courts, if a deed or release be admitted, that Court may proceed; and if that party submit to trial, he cannot afterwards apply for a prohibition. *Smart v. Wolff*, 3 T. R. 348.

10. *Quære*, whether the misinterpretation of a statute by an inferior Court, the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, be a ground for its prohibition, or whether it be not rather a matter of appeal? But clearly, in such a case, a prohibition will not lie unless it be made to appear to the superior Court that the party applying for the prohibition has, in the course of the proceedings in the inferior Court, alleged the

grounds for a contrary interpretation of the statute on which he applies for the prohibition, and that the inferior Court has proceeded notwithstanding such allegation. *Home v. Earl Camden (in error)*, 2 H. Black. 553.

11. A prohibition will not lie to the Court of Admiralty for refusing a plea of the Statute of Limitations if it be badly pleaded. *Ewer v. Jones*, 6 Mod. 26., 2 Ld. Raym. 937.

12. No prohibition lies to the Admiralty for suing on a recognisance there taken by a stipulation against one that was surety in the nature of bail. *Par v. Evans*, T. Raym. 78.

13. The King's Bench will not prohibit the Court of Admiralty from proceeding on an Order of Council to arrest a ship. *Sands v. Exton*, 2 Show. 303., T. Raym. 488., Skin. 91.

14. If a cause appealed from an inferior Court having no jurisdiction be remitted to the inferior Court by the Court of Appeal, with a judgment for costs against the appellant, a prohibition will lie as well to the Court of Appeal, touching the costs, as to the inferior Court, costs being mere incidents to the principal matter. *Darby v. Cosens*, *Nolley v. Same*, 1 T. R. 552.

### III. OF THE TIME OF APPLICATION FOR —

#### 1. *Before appearance or plea given.*

15. A process having issued from the Court of Admiralty at the suit of the master of a ship against the owners, to arrest the cargo at Bristol, on account of salvage, motion for a prohibition, before any appearance had been given or libel exhibited in the Court of Admiralty, was made, upon affidavits from which it appeared that the goods landed were arrested on account of salvage; and *Sand's case* (1 Lev. 351.) was cited, where, on a process to stay a ship in the river, a prohibition was granted before appearance: *Held* that though the goods might be then detained at land, yet the salvage, which was the cause of the arrest, might have been at sea, which would appear by the libel; prohibition therefore refused before appearance or libel to try the validity of the process, because the party might have another remedy

\* 2. If the cause of action appear to be out of the jurisdiction of the Admiralty, a prohibition lies, though the party may have allowed the jurisdiction there. 2 *Brownl.* 30., 1 *Com. Dig.* 278., and see 2 *Mod.* 196.

3. Though it be after sentence there. *Ibid.*

4. Or after a sentence upon appeal to the Delegates. *Sir L. Jenkins*, vol. i. p. 81., 1 *Com. Dig.* 278.

by action of trespass or replevin; and *Sand's case* held not to be in point, for there the process was not for an appearance, as in this case, but in the nature of an execution. *Tranter v. Watson* (1782), 6 Mod. 12., Salk. 35., 2 Ld. Raym. 931.

## 2. Before and after sentence.

16. Prohibition will not be granted before sentence where the matter of suggestion is *dehors* the proceedings, and not verified by affidavit. *Caton v. Burton* (1775), Cowp. 330.; *Roberts v. Cadd* (1727), Bunb. 247.

17. After sentence in the Admiralty, if it appear that the matter contained in the libel is triable at law, prohibition will be granted. *Tremoulin v. Sands* (1698), Comb. 462, 463., 1 Ld. Raym. 272., 6 Vin. Abr. 516.

18. A prohibition to the Court of Admiralty was applied for to suspend the effect of a sentence for seamen's wages there. The ship was destroyed, and the master had covenanted and agreed to allow the seamen their wages in consideration of their assisting to save the cargo. This covenant was not stated in the Court below to have been under seal, but that fact was now suggested as a ground for the prohibition. Held that the plaintiff had lost the opportunity, by not taking the objection below, or coming for a prohibition before sentence, and with an affidavit of the truth of the suggestion. *Buggin v. Bennett* (1766), 4 Burr. 2035.

19. If a prohibition to the Court of Admiralty be applied for before sentence, the superior Court will examine into the case, and investigate the grounds of proceedings in the Admiralty Court; but after sentence the party applying must show a nullity of jurisdiction on the face of the proceedings. *Ludbroke v. Crickett* (1788), 2 T. R. 649., *Anon.* (1723), 8 Mod. 194.

20. A prohibition after sentence will not be granted, unless it be shown clearly that the Court below had no jurisdiction, nor if the matter be doubtful. *Carstake v. Mapledoram*, 2 T. R. 473.

21. Prohibition to the Admiralty will not lie after a sentence upon a surmise of a matter not appearing in the libel. *Palmer v. Pope*, Hob. 79. 213.

## IV. To WHOM GRANTED — ET CONTRA.

22. A prohibition will not lie to the Admiralty Court on the application of the plaintiff in that Court. *Browne v. Walker* (1683), 2 Show. 406.

## V. OF THE IMPOSITION OF TERMS ON THE GRANT OF —

23. A prohibition could not formerly be obtained for a cause actionable at Common Law unless the defendants appeared and gave bail. *Wharton v. Pits* (1692), 2 Salk. 548.

24. On application for a rule absolute for a prohibition to the Admiralty Court, in which Court the defendant had libelled the plaintiff for running foul of his vessel, on the suggestion that the cause of action arose on the Thames, and in the body of the county of Kent, it was admitted against the rule that the Admiralty had no jurisdiction (as appeared from the case of *Violet v. Blague*), but contended that it was discretionary in the Court either to grant or refuse a prohibition, and that there were circumstances in the present case which would induce them to refuse interfering, at least for the present; for it appeared that the plaintiff was a foreigner, and the ship a foreign vessel, and as both the ship and the plaintiff had gone abroad, the only security which the defendant had to answer the damage done to him was the bail given in the suit in the Admiralty Court; therefore this Court might refuse to grant a prohibition till the plaintiff put in bail to an action which had been commenced against him in a Court of Common Law, to which he had not yet appeared; and the case of *Wharton v. Pits* (Salk. 548.) was cited, where similar terms were imposed by the Court on the party applying for a prohibition: Held, however, that as the reasons for the judgment in that case, as reported by Salkeld, were not disclosed, and as the case itself was not mentioned in any other book, it was not a sufficient authority to warrant the imposing the terms prayed for; and the rule for a prohibition was therefore made absolute. *Vellhasen v. Ormsley*, (1789), 3 T. R. 315.

RANSOM.\*

I. WHAT AMOUNTS TO — ET CONTRA.

II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —

III. OF THE STATUTORY REGULATIONS THEREON AND THE CONSTRUCTION THEREOF —

IV. PRACTICE IN CASES OF —  
See SALVAGE (*Military*).

I. WHAT AMOUNTS TO — ET CONTRA.

1. A purchase, by the owner in a neutral country, of his ship condemned as prize by an enemy is illegal, as being a ransom. *Havelock v. Rockwood* (1799), 8 T. R. 268.

II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —

2. A ship was libelled in the Admiralty Court by the master, who, being taken by a French privateer, had ransomed the ship for 300*l.*, and now sued for the payment of it, he being detained as a prisoner at Dunkirk until payment. Sentence was given in the Admiralty against the ship. Prohibition refused, on the ground that the taking and pledge being on the high seas, the ship, by the law of the Admiralty, must answer for the redemption of the master. *Wilson v. Bird* (1693), 1 Ld. Raym. 22.

3. In an action on a ransom bill, containing a clause that the bill should be enforced though the hostage should die or the vessel be retaken, *Held* on demurrer that the Court of King's Bench had no jurisdiction, it being a matter of prize cognisable by the Court of Admiralty. *Anthon v. Fisher*, 3 Dougl. 166.

III. OF THE STATUTORY REGULATIONS THEREON, AND THE CONSTRUCTION THEREOF.

4. By 22 Geo. 3. c. 25. ss. 1. and 3. no British subject may ransom or enter into any contract for ransoming any ship belonging to any other subject, or any goods

on board the same, which shall be captured by the subjects of any state at war with his Majesty, or by any persons committing hostilities against his subjects, under a penalty of 500*l.*

5. By s. 2. all contracts entered into, and all bills, notes, and other securities given by any person for ransom of any such ship, or of any goods on board thereof, shall be void.†

6. The Ransom Acts are remedial laws, and must be construed liberally to meet the mischief. *Havelock v. Rockwood*, 8 T. R. 277.

7. The ransom of British ships or goods taken by the enemy was made void and prohibited under a penalty of 500*l.* by 22 Geo. 3. c. 25. *Anthon v. Fisher*, 2 Dougl. 649. n.; and see *Woodward v. Larkin*, 3 Esp. 266.

8. By the general maritime law, in cases of ransom the master may bind by his contract the whole cargo, as well as the ship; but by a modern regulation ransom is put an end to in the practice of this country. *The Gratitude*, *Mazzola*, 3 C. Rob. 240.

9. Ransoms have been forbidden by this country, as subject to great abuse, but under circumstances of necessity they are still allowed. *Ships taken at Genoa* (1803), 4 C. Rob. 403.

10. If the master ransom his ship, and bring her to England, the owner may take her from him without paying the price. *Parsons v. Scott*, 2 Taunt. 363.

11. And if the master, to enable himself to pay the ransom, borrow money of a person acting with him in the transaction, he cannot be compelled to repay it. *Webb v. Brooke*, 3 Taunt. 6.

\* 1. As to the origin and practice of ransom and exchange of prisoners, see 3 C. Rob. App. A. pp. 1. 23.

† 2. This statute is not limited as to time, but the 33 Geo. 3. c. 66., containing (in ss. 37, 38, 39.) the same prohibitions, expired with the French war.

3. By 55 Geo. 3. c. 160. ss. 9, 10, 11, 12. the ransom of British ships is declared to be illegal, and provision is made for the prevention thereof; this act, however, expired with the last war.

## IV. PRACTICE IN CASES OF —

12. *Semble* that a contract of ransom cannot be put in suit on the part of the alien enemy in the Courts of the other bel-

ligerent; and when it was formerly a legal contract in England, proceedings were always carried on against the owner in the name of the hostage suing for his liberty. *The Rebecca, Maddick*, 5 C. Rob. 102.

## RECAPTORS.

## I. WHO ENTITLED TO BE CONSIDERED AS — ET CONTRA.

## II. OF THE RIGHTS OF —

## III. OF THE RESPONSIBILITY OF —

See CAPTORS, RECAPTURES, SALVAGE (*Military*).

## I. WHO ENTITLED TO BE CONSIDERED AS — ET CONTRA.

1. An American ship was taken by a privateer, A., who kept possession ten days, when the prize was retaken by an American cruiser, B., who kept possession thirteen days. It was then again recaptured by a British cruiser, C., at the time of whose recapture of her the prize-master and crew of A., the first captor, were on board the prize. *Held* that A. was to be considered as the actual captor, and C. as the recaptor. Sentence accordingly: salvage awarded to the recaptor equivalent to the share of a joint-captor. *The Lucretia*, Hay & Marriott, 227.

2. Persons put on board a cartel with their own consent by the government of the enemy, to be carried to their own country, are bound to do no act of hostility. Therefore a capture made by such persons of a vessel of their own country from the enemy is not a recapture in contemplation of law, and gives them no title to salvage, and the former owner no title to claim the vessel. Property so recovered decreed to be given up to the disposal of the Crown. *The Mary, Folger*, 5 C. Rob. 200.

## II. OF THE RIGHTS OF. — \*

3. A neutral vessel recaptured from the

enemy may, if necessary for the mutual safety and interest of herself and the recaptors, be equipped, armed, and employed at her own risk, in protecting herself and the recaptors from the attack of the enemy's cruisers. Claim of the neutral owners for restitution in value, in consequence of their ship having become a wreck whilst and in consequence of being so employed, pronounced against, affirming the sentence of the Vice-Admiralty Court of Jamaica. *The Swift, Davis*, 1 Acton, 1.

4. Recaptors from pirates have a lien on the property for salvage, and are entitled to a reward. One eighth might be a proper award to them. The remaining seven eighths, if unclaimed, would belong to her Majesty in her office of Admiralty, as *bona vacantia*. *The Marianna, Dos Santos*, 3 Hagg. 200.

## III. OF THE RESPONSIBILITY OF —

5. Recaptors are under a responsibility to restore the property of allies and neutrals, and this responsibility will exonerate the original captors, unless it can be shown that the original captors so dealt with the property and accompanying documents that it could not be ascertained to be neutral, on the just and uniform principles of the Law of Nations, when it came into the Prize Court of the recaptors. *The Betsey, Murphy*, 1 C. Rob. 96.

\* 1. By the old practice, a recaptured vessel belonged neither to the King, the Admiral, nor the former owners, but to the recaptors. 2 *Brownl.* 11. (8 Jac.), *Weston's case*, citing 7 Ed. 4. c. 14., 2 & 3 P. & M. D. 128. b.

2. Unless the owners claimed it on the day on which it was retaken, and *ante occasum solis*. *Jenk.* 201. pl. 22.

3. So also as to recaptured ships the property of allies of this country, and retaken by British subjects from a common enemy. *Ibid.*

4. If recaptors allow a ship to pursue her voyage, they need not proceed to adjudication till six months after her return. 1 *Park on Ins.* 166.

## RECAPTURE.\*

1. If a ship be taken by letters of marque and be not brought *infra prasidia* of that King by whose subjects it was taken, it is no lawful prize, and the property is not altered, and therefore a sale in such a case is void. *Anon.*, Mar. 110, 111. pl. 188., 6 Vin. Abr. 519.

2. By the ancient law of this country, 24 hours' possession of prize was a sufficient conversion of the property to oust the rights of the owner. The alterations and modifications from time to time made therein by statute down to the 45 Geo. 3. c. 72. considered in *The Ceylon, Mulac*, 1 Dodson, 110.; and see *Goss v. Withers*, 2 Burr. 683.

3. The Prize Act of 45 Geo. 3. c. 72. in making provision for the restitution of British vessels taken from the enemy, though it only mentions the usual mode of recapture at sea, cannot be construed to exclude other modes of recapture. *The Ceylon, Mulac*, 1 Dodson, 119.

4. There is no uniform rule among nations as to the time when recaptured property vests in captors to the exclusion of the owners. Nations concur in principle, indeed, so far as to require firm and secure possession, but the rules of evidence respecting the possession are not uniform. The law of England, on recapture of property of allies, is the law of reciprocity. It adopts the rule of the country to which the claimant belongs. In the event of that

country having no rule thereon, the Court of Admiralty would apply to the case the law of England on recapture as between its own subjects. *The Santa Cruz, Picoa*, 1 C. Rob. 50. 61.; and see *Goss v. Withers*, 2 Burr. 683.

5. The maritime law of England having adopted a liberal rule of restitution on salvage with respect to the recaptured property of its own subjects, gives the benefit of that rule to its allies till it appears that they act towards British property on a less liberal scale. In such a case it adopts their rule, and treats them according to their own measure of justice, condemning where they condemn, and restoring where they restore. *The Santa Cruz, Picoa*, 1 C. Rob. 62.

6. In questions of reciprocity in claims for restitution of property recaptured, the cases must be determined with respect to the law of the claimant's country at the time of the recapture. *Ibid.* 78.

7. In questions of restitution of property recaptured, the *onus probandi* in the first instance lies on the recaptors to show the absence of reciprocity as to restitution by the laws of the claimant's country, but on *prima facie* evidence being shown by the recaptors, the *onus* of proof of reciprocity shifts to the claimant. *Ibid.* 67.

8. It is not essential to constitute a capture, or such an one as to give occasion to

\* 1. By 55 Geo. 3. c. 160. s. 5. all ships, vessels, and goods belonging to British subjects and retaken from the enemy, shall be restored to the owners on payment of salvage, except in the case of such ships set forth for war by the enemy, which shall be condemned as lawful prize to the recaptors. (This act, however, expired with the last war.)

2. Where the circumstances of the case render the capture from an enemy legal, it is a title that will sometimes prevail even against the claim of a former British owner from whom the goods may have been previously taken by the same enemy; for in such cases of recapture the law has been adjudged to be, that they become indefeasibly vested in the recaptor, unless they be retaken on the same day that they were first taken and the owner before sunset puts in his claim of property, and this is agreeable to the Law of Nations, as understood in the time of Grotius, with regard to captures made at sea, which were held to be the property of the captors after a possession of twenty-four hours, though the modern authorities require that before the property can be changed the goods must have been brought into port, and have con-

tinued a night *infra prasidia*, in a place of safe custody, so that all hope of recovering them was lost. In order fully to vest the property of a captured vessel in the captors, so as to bar the original owner, it is also necessary that it should have been condemned as prize by legal sentence of a Court of Admiralty; and as regards ships or goods taken and retaken at sea, and in questions arising thereon between the original British owner and a British recaptor, it is now established by several acts of parliament, that whatever period of time may have intervened, and whether sentence of condemnation may have been obtained or not, the property is to be restored to the original owners on payment of salvage. 2 *Stephens' Black. Comm.* 80.

3. By the Marine Law of England as practised in the Court of Admiralty, it was formerly held that the property was not changed, so as to bar the original owner in favour of a vendee or recaptor, till there had been a sentence of condemnation, but now, by statute, this right of the original owner in case of a recapture is preserved to him for ever, upon the payment of stated salvage to the recaptors. 1 *Park on Ins.* 158.

a recapture under the Prize Act, that the enemy should have taken actual possession. *The Edward and Mary, Tilly*, 3 C. Rob. 305.

9. There is one species of recapture from the enemy which vests the whole interest in the recaptors, viz. where an enemy's ship taken originally by one English vessel and lost again to an enemy cruiser is subsequently recaptured by another English vessel. *Note to The John and Jane, Ashew*, 4 C. Rob. 217.

10. Where a British vessel had been seized in a French port for an asserted violation of French municipal laws, condemned, and sold under that sentence to a French merchant, and afterwards recaptured on the breaking out of a war between France and England, *Held*, that it could not be restored on salvage to the former British proprietor; the restitution to the former owners mentioned in the Prize Act being confined to property taken by the enemy as prize. *Jeune Voyageur, Guerard*, 5 C. Rob. 1.

11. In a cause of possession at the suit of the former British owner of a vessel which had been captured by the French

and carried into a port of Spain, then an ally of the French, where she was condemned by the prize tribunal at Paris, but was afterwards seized by Spain on becoming an enemy of France, and sold, *Held*, on proof of such first sale, that the right of the former British owner was divested, and that the Spanish seizure was not in the nature of a recapture enuring to the benefit of the former British owner. *The Victoria, otherwise Alfred the Great*, Edwards, 97.

12. A sentence of condemnation by the enemy would not affect the rights of the British owner in the event of recapture, but a legal sale by them to a neutral under such a sentence would divest the British owners' claim. A British ship retaken under neutral colours and condemned as on an illegal voyage, *Held*, under the circumstances, to have been duly sold to the neutral by the enemy. Claim of former British owner for restitution on salvage pronounced against. *The Cornelia, Roose*, Edwards, 244.

See RECAPTORS, SALVAGE  
(Military), TITLE.

## REGISTRARS.

1. By 54 Geo. 3. c. 93. s. 17. the registrars of the High Court of Admiralty and of H. M. Courts of Vice-Admiralty, are to register as therein directed prize agents' letters of attorney within fourteen days from the delivery thereof, and transmit copies of such entries quarterly to the treasurer of Greenwich Hospital, under a penalty of 500*l*.

2. By s. 19. the registrars of the Courts of Vice-Admiralty are to transmit quarterly to the treasurer of Greenwich Hospital copies of all prize agents' letters of attorney registered, and of the bonds given by them thereon, under penalty of 500*l*.

3. By s. 76. the registrars of the High Court of Appeals and High Court of Admiralty are to transmit quarterly to the treasurer of Greenwich Hospital or his deputy, and to the treasurer of the Navy, a list, &c. of all the prizes adjudged in their respective Courts; and by s. 77. registrars of Courts of Vice-Admiralty are also quarterly to transmit such lists, &c. to the registrar of the High Court of Ad-

miralty and the treasurer of Greenwich Hospital, and to his deputy near such Court, under penalty of 50*l*.; and such lists are to be hung up for public inspection in the registries of the High Court of Admiralty and Appeals respectively.

4. By 2 W. 4. c. 53. ss. 30. and 31. the registrars of the High Court of Appeals, of the High Court of Admiralty and of the Courts of Vice-Admiralty respectively, are to transmit quarterly to the treasurer of Chelsea Hospital a list, &c. of all prizes taken and adjudged in any conjunct expeditions with the navy and army; and by s. 32. they are to transmit also copies of all letters of attorney delivered to them with the particulars of prizes.

5. A monition having issued against the deputy registrar of a Vice-Admiralty Court to bring in proceeds, he alleged on oath that the money had been remitted, and he believed invested. Motion for an attachment against him, on the ground of the insufficiency of such return, rejected; but the Court refused to dismiss the party, and

granted a monition against the principal registrar. *The Prima Vera*, 5 C. Rob. 151.

6. The registrar of a Vice-Admiralty Court *Held* not responsible for money transmitted to England on an appeal, it having been sent under proper precautions, and in the usual course of business, to be deposited

in the Bank of England, and afterwards lost by the failure of the consignee. *The Prima Vera*, *Vodonick*, Edwards, 23.

7. The Court will uphold the registrar's entry in the assignation book, and not permit it to be questioned. *The Monarch, Bell*, 1 W. Rob. 23. 25.

## REGISTRAR AND MERCHANTS.

## I. MISCELLANEA.

## II. OF REFERENCES TO —

1. *In questions of average* — see AVERAGE.

2. *In causes of bottomry* — see BOTTOMRY.

3. *In causes of salvage* — see SALVAGE.

4. *In causes of wages* — see WAGES.

1. On an award of costs and damages to a Dutch claimant against an English captor, the Court directed the registrar to examine and report as to the damages due, taking to his assistance for that purpose two merchants, to be named by the parties and approved by the Court, and recommended that the English captor should select a Dutch merchant, and the Dutch claimant an English merchant, for the purpose of such reference. *The Vander Leye*, Hay & Marriott, 184.

2. Accounts of charges attending the execution of a commission of unlivery and appraisement referred to the consideration of the registrar and merchants as being enormous. *L'Esperance*, *Stegman*, 1 Dodson, 50.

3. Loss and damage of salvors attending a salvage service referred to the registrar and merchants to examine and report upon. *The Oscar*, *Lofgren*, 2 Hagg. 261.; *The Salacia*, *Garland*, *Ibid.* 269.

4. Reference decreed to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming as salvor also in that capacity. *The Happy Return*, *Woodcock*, *Ibid.* 207.

5. The Court is in the habit of paying great attention to the reports of the registrar and merchants. *The Zodiac*, *Scott*, 1 Hagg. 325.

6. *Semble*, that it is not competent to the Court to devolve on the registrar and merchants the solution of any point of law. *The Ocean*, 10 Jur. 506.

7. The Court is extremely unwilling to disturb the reports of the registrar and merchants made in cases of damage on the

amount of loss incurred, and of the compensation due, because from their experience in such matters they are fully competent to arrive at a just and proper conclusion, and most able to judge of the value of the property lost. *The Matchless*, *Ibid.* 1017.

8. The report of the registrar and merchants need not be special upon every particular matter. Their allowing the item to stand is sufficient, the inference therefrom being, not that they have omitted to take it into consideration, but that they consider it a proper and allowable charge. *The Ocean*, *Ibid.* 506.

9. In a case of damage, which having been pronounced for and referred in the usual manner to the registrar and merchants to report upon the amount, their report was objected to on the ground of insufficiency of evidence produced to them as to the value of the property; and a second reference prayed for the purpose of offering further evidence, which was opposed on the ground that the applicant's right thereto was barred by his own laches; the Court, though intimating that the applicant ought to have been prepared with and to have produced the whole of his evidence before the registrar and merchants, nevertheless permitted a further reference on payment of the costs of the former reference, and of the application for a second. *The Matchless*, *Ibid.* 1017.

10. The Court consented to hear objections to the report of the registrar and merchants on motion, the amount being small. *The Zodiac*, *Scott*, 1 Hagg. 323.

## RESTITUTION.

1. Restitution after a first seizure does not bar a second by another party, though if judicially recorded it would bar the first seizor; but whoever ventures on a second seizure must do so under the peril of costs and damages. *The Mercurius, Gerdes*, 1 C. Rob. 81.

2. Restitution by consent without reservation must be understood to include an act of amnesty on both sides. Claim for costs and damages against captor held to be barred thereby. *The Maria Powlona, Hemmes*, 6 C. Rob. 236.

3. A British prize ship taken by the French was condemned in a Spanish (neutral) port, where it was sold to a Spaniard, and afterwards brought to England, where, on the breaking out of hostilities against Spain, it was seized on behalf of the Crown. Proceedings having been taken on behalf of the former British owners to obtain restitution on the ground of the illegal condemnation, the Crown, as standing in the place of the Spanish purchaser, being compelled to acknowledge the illegal condemnation, consented to restitution to the former British owner, which was decreed accordingly. *The Nostra Signora de los Angelos, Saragossa*, 3 Rob. 287.

4. Where a British vessel had been seized in a French port for an asserted violation of French municipal laws, condemned, and sold under that sentence to a French merchant, and afterwards recaptured on the breaking out of a war between France and England, *Held*, that it could not be restored on salvage to the former British proprietor, such restitution to former British owners under the Prize Act being confined to property taken by the enemy as prize. *Jeune Voyageur, Guerard*, 5 C. Rob. 1.

5. On a claim of the former British owner for restitution on salvage of a British prize ship taken on a voyage from A. to B., both blockaded ports, no claim having been given for the neutral owner in whose name the ship was documented, objection that the proceedings were for condemnation as

neutral property for breach of blockade, and that no room therefore was afforded for the operation of the clause of the Prize Act as to salvage on recapture, as relating only to British property recaptured from the enemy, overruled in consequence of the discovery of a paper on board suggesting an enemy interest. Restitution accordingly on salvage and expenses. *Vriendschap, Hansen*, 6 C. Rob. 38.

6. A sentence of condemnation by the enemy would not affect the rights of the British owner in the event of recapture, but a legal sale by them to a neutral under such a sentence would divest the British owner's claim. A British ship retaken under neutral colours, and condemned as on an illegal voyage, *Held*, under the circumstances, to have been duly sold to the neutral by the enemy. Claim of former British owner for restitution on salvage pronounced against. *The Cornelia, Roose, Edwards*, 244.

7. The general rule is, that a person unjustly deprived of his property is entitled to full restitution with costs and damages; but this rule is subject to modification, as where the claimant has given occasion by his conduct to the capture, &c., in which case he is entitled only to simple restitution. *The Acteon, Rogers*, 2 Dodson, 52.

8. The having received from the underwriters payments as for a total loss or capture, in which, however, restitution had been afterwards obtained upon terms, *Held* not to preclude the assured from suing and endeavouring to obtain restitution on a subsequent capture of the same vessel. *Robertson v. Hamilton* (1811), 14 East, 522.

9. A seizure of a ship forfeited under the Navigation Act divests the property. *Wilkins v. Despard* (1792), 5 T. R. 112.

See AMELIORATIONS, CLAIMANTS, COSTS AND DAMAGES, DEMURRAGE, PRIZE, RANSOM, RECAPTORS, RECAPTURE, SALVAGE (*Military*), TITLE.



ROYAL NAVY.\*

1. By 22 Geo. 2. c. 33. s. 24. every captain, commander, or other officer of any of his Majesty's ships or vessels receiving or permitting to be received on board such ship, any goods or merchandise contrary to article 18, shall for every such offence, besides any punishment inflicted by that act, forfeit the value of all such goods so received, &c. on board as aforesaid, or the sum of 500*l.*, at the election of the informer; but only one such penalty shall be recovered against the same person for the same offence, one moiety of which shall go to the informer, and the other to the use of Greenwich Hospital, to be recovered by action of debt or information in any of his Majesty's Courts of Record at Westminster or in the High Court of Admiralty, at the election of the informer or person suing for the same; and the Court shall award such costs to the parties as is just; and in all cases where judgment or sentence is given against such offender, the Court where such sentence is given shall with all convenient dispatch certify the same to the Admiralty.

2. By 59 Geo. 3. c. 25. all freight to be paid for the conveyance on board his Majesty's ships of gold, silver, or other valuable articles, shall be divided in the manner directed by proclamation.†

3. Though the High Court of Admiralty originally possessed the sole and exclusive criminal jurisdiction over naval officers, this jurisdiction has been some time transferred by the institution of Naval Courts Martial; and it will now, therefore, be very cautious in determining a question of civil interest, upon grounds imputing criminal misconduct to officers in high situations of naval command, more especially where such asserted misconduct has been inves-

tigated and disproved in the proper tribunal. *The Ville de Varsovie*, 2 Dodson, 317.

4. Warrant of arrest issued against the master of a British merchant vessel for contempt in passing one of his Majesty's ships without striking topsail. *The King v. Brown*, 3 Hagg. 97. n.

5. *Quare*, Is not every acquisition distributable to the officers and crews of his Majesty's ships and to marines in the first instance acquired for the Crown? Could prize agents, the only persons authorized to make distributions in such cases, compromise any such rights without consent of the Crown? And could not the Crown claim, in cases of salvage effected by servants of the Crown in its pay and on board its ships, the amount of salvage and its appropriation for public purposes? *The Thetis*, 3 Hagg. 233.

6. The captain of a sloop of war is not answerable for damage done by her running down another vessel, the mischief appearing to have been done during the watch of the lieutenant, who was upon deck and had the actual direction and management of the steering and navigating of the sloop at the time, and when the captain was not upon deck, nor was called by his duty to be there. *Nicholson v. Mouncey*, 15 East, 384.; and see *Huggett v. Montgomery*, 2 N. R. 446.; *Rose v. Miles*, 4 M. & S. 101., and Smith's Merc. Law, 129. n.

7. The general principle of the navy is strongly recognised, of holding a strict unity and identity between the several classes of seamen composing a ship's company, even in head-money or bounty. *Two Piratical Gunboats*, 2 Hagg. 408.

\* 1. The statutes regulating the government of his Majesty's ships, vessels, and forces by sea, are the 22 Geo. 2. c. 33., 29 Geo. 2. c. 27., 19 Geo. 3. c. 17., 37 Geo. 3. c. 70., 54 Geo. 3. c. 158., 55 Geo. 3. c. 171., 57 Geo. 3. c. 7.

2. The 11 Geo. 4. § 1 W. 4. c. 20. consolidates

the laws relating to the pay of the Royal Navy, repealing former statutes thereon. It is amended by the 2 W. 4. c. 40., 4 & 5 W. 4. c. 25., and 5 & 6 W. 4. c. 24.

† See the proclamations in the Appendix.

## SALVAGE (CIVIL).\*

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CASES OF— 355.

1. *Generally*, 355.
2. *By statute*, 356.
3. *In personal suits against the owners of property salvaged*, 356.
4. *In suits against British and foreign ships of war*, 356.
5. *As to agents' advances and expenses*, 357.
6. *As to awards of magistrates and commissioners of salvage*, 357.

See DERELICT.

## II. OF THE JURISDICTION OF MAGISTRATES IN CASES OF —, 358.

## III. OF THE JURISDICTION OF COMMISSIONERS OF SALVAGE IN CASES OF —, 358.

## IV. OF THE JURISDICTION AS TO— WITHIN THE CINQUE PORTS, 358.

## V. OF THE PARTIES ENTITLED TO BE CONSIDERED AS SALVORS — ET CONTRA, 359.

1. *Generally*, 359.
2. *Parties on board vessels salvaged*, 360.
  - (a) *The crew*, 360.
  - (b) *The passengers*, 360.
3. *Agents*, 360.
4. *Officers and ships in the Government service*, 361.
5. *Other parties*, 362.

## VI. WHAT SERVICES AMOUNT TO — ET CONTRA, 362.

1. *Towage where amounting to — et contra*, 362.
2. *Pilotage where amounting to — et contra*, 362.
3. *Other services*, 363.

## VII. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF SALVORS UNDER THE STAT. 9 &amp; 10 VICT. c. 99., 363.

## VIII. OF THE RIGHTS OF SALVORS, 365.

1. *Owners of salvaging vessels*, 365.
2. *Of the relative rights of co-salvors*, 366.
3. *With reference to second salvors*, 366.
4. *To bring derelict vessels into English ports for adjudication*, 368.
5. *Of the lien of*, 368.

## IX. CLAIMS FOR — WHERE BARRED — ET CONTRA, 368.

1. *Generally*, 368.
2. *By custom to render mutual assistance*, 369.
3. *By agreements between the parties prior to the salvage services being rendered*, 369.
4. *By quitting the vessels salvaged after completion of their services*, 371.
5. *By misconduct of salvors*, 371.
6. *By fraud in the salvors' case*, 372.
7. *By lapse of time*, 372.

## X. OF THE RIGHTS OF OWNERS OF PROPERTY SALVED AS AGAINST SALVORS, 372.

1. *To determine the extent and duration of salvors' services*, 372.
2. *To obtain release and delivery to them of property salvaged*, 373.
3. *Salvors' claims against, when terminated*, 373.

## XI. GENERAL CONSIDERATIONS AS TO THE ALLOTMENT OF —, 373.

## XII. OF THE INGREDIENTS OF SALVAGE SERVICES, 374.

1. *Generally*, 374.
2. *Skill and knowledge of salvors*, 375.
3. *Risk and loss of life*, 375.
4. *Value of the property salvaged*, 375.
5. *Ignorance of the locality by vessels salvaged*, 376.

\* 1. The 9 & 10 Vict. c. 99. (printed in the Appendix) consolidates and amends the laws relating to salvage, and repeals former statutes thereon, viz. 12 Anne, st. 2. c. 18., 4 Geo. 1. c. 12., 26 Geo. 2. c. 19., 49 Geo. 3. c. 122., 53 Geo. 3. c. 87., 53 Geo. 3. c. 140., 1 & 2 Geo. 4. c. 75.

2. This act also extends to Ireland, and repeals the former statutes in force as to salvage there, viz. 4 Geo. 1. c. 4., 11 Geo. 2. c. 9., 17 Geo. 2. c. 11., 23 & 24 Geo. 3. c. 48.

3. The act does not extend to Scotland.

4. By the stat. 39 & 40 Geo. 3. p. 1. and p.

c. X., provision is made for adjusting the salvage of anchors, cables, &c., found in the Humber. *Abb. Sh.* 574. n.

5. Salvage is an allowance made for saving a ship or goods, or both, from the damages of the seas, fire, pirates, or enemies. 1 *Park on Ins.* 300.

6. Wherever service has been rendered in saving property on the sea, or wrecked on the coast of the sea, the service is, in the sense of the Maritime Law, a salvage service. *The Emulous*, 1 Sumner's (AMERICAN) Rep. 207.

## XIII. AWARDS OF — AND THE PRINCIPLES OF SUCH REMUNERATION, 376.

1. *With regard to the allotment of a specific proportion of property saved, 376.*
2. *For preservation of life, and how affected thereby, 377.*
3. *As to distinctions between services to the ship and to the cargo, 377.*
4. *In cases of extraordinary merit, 377.*
5. *In cases of ordinary merit, 378.*
  - (a) *Where the property was of large value, 378.*
  - (b) *Where the property was of moderate value, 379.*
6. *In cases of trivial merit, 379.*
7. *In cases of derelict vessels, 380.*
  - (a) *Proportions of value usually awarded, 380.*
  - (b) *Where more than a moiety was awarded, 381.*
  - (c) *Where a moiety was awarded, 381.*
  - (d) *Where less than a moiety was awarded, 382.*
8. *In cases of derelict goods, tackle, &c., 383.*
9. *Rates of salvage of droits of Admiralty, 383.*
10. *In cases of salvage to whaling vessels, 383.*
11. *In cases of salvage by transhipment, 384.*
12. *Where the services were rendered by officers and ships in the service of Government, 384.*
13. *Where the services were rendered to ships in the service of Government, 385.*
14. *Where the services were rendered by foreign ships to British ships, 385.*
15. *Where the salvaging ships were steam-vessels, 385.*
16. *Where the ships salvaged were steam-vessels, 386.*
17. *Where the services were rendered by pilots, 386.*
18. *On appeals from awards of Commissioners of Cinque Ports, 387.*

19. *On appeals from awards of magistrates, 388.*
20. *Where previous awards had been made under arbitration, 388.*
21. *Where mutual benefit was rendered and received by the salvors, 389.*
22. *How affected by subsequent misconduct of salvors, 389.*
23. *Other cases, 389.*

## XIV. OF THE APPORTIONMENT OF —, 389.

1. *Of the principles of — with reference to owners of salvaging vessels, 389.*
2. *Claims of the Admiralty *quâ* owners, 390.*
3. *With reference to antecedent agreements for —, 390.*
4. *In cases of derelict, 391.*
5. *Among officers and crews of coast-guard cruisers and stations, 393.*
6. *Where the salvaging ships were steam-vessels, 393.*
7. *Shares of apprentices and boys, 393.*
8. *Sundry cases of —, 394.*

## XV. OF THE LIABILITY TO THE PAYMENT OF —, 395.

1. *Of the East India Company, 395.*
2. *Of freight, 395.*

## XVI. OF THE PAYMENT OF —, 396.

## XVII. PRACTICE IN CAUSES OF —, 397.

1. *Generally, 397.*
2. *On appeals from awards of Commissioners and magistrates, 397.*
3. *As to separate actions by the salvors, 398.*
4. *As to consolidation of actions, 398.*
5. *As to the production of protests, and the effect thereof, 398.*
6. *As to references to the registrar and merchants, 398.*
7. *In estimating the value of the property salvaged, 398.*
8. *Miscellanea, 399.*

## XVIII. COSTS IN CAUSES OF —, 399.

## XIX. AS TO TENDERS IN CAUSES OF — see TENDERS.

## XX. AS TO THE PERCENTAGE TO GREENWICH HOSPITAL ON SALVAGE AWARDS TO HER MAJESTY'S SHIPS — see GREENWICH HOSPITAL.

See SALVAGE (*Military*), WRECK.

## I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CASES OF —

1. *Generally.\**

## 1. The jurisdiction of the Court of Ad-

miralty in salvage causes is founded on a proceeding against property which has been salvaged. *The Zephyrus, Blake*, 1 W. Rob. 331.

## 2. Claims of American salvors, for services

\* 7. The Court of Admiralty, which has jurisdiction in questions of salvage, is well adapted for the purpose of administering justice in those in-

stances in which the property is valuable and the claimants numerous, and the Court will fix the sum to be paid, adjust the proportions, take care of

rendered to a British ship, adjudicated on in the High Court of Admiralty. *The Salacia, Garland*, 2 Hagg. 262.\*

See post, Nos. 39. 150.

See SALVAGE (*Military*), cap. II.

## 2. By statute. †

3. By 3 & 4 Vict. c. 65. s. 4. jurisdiction is given to the High Court of Admiralty to decide all questions as to the title to, or ownership of, any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of salvage, &c.

4. By s. 6. jurisdiction is given to the High Court of Admiralty to decide all claims of salvage, damage, or towage relative to any ship or sea-going vessel, and to enforce payment thereof, whether such ship or vessel may have been within the body of a county, or on the high seas, at the time when the cause of action accrued.

5. By 9 & 10 Vict. c. 99. † s. 21. all cases of salvage claims exceeding 200*l.* shall, unless no agreement by reference to arbitrators or otherwise, be made for the settlement thereof, be determined exclusively by the High Court of Admiralty.

6. By s. 40. the High Court of Admiralty shall have jurisdiction to decide, in manner therein-before mentioned, upon all claims and demands whatsoever in the nature of salvage, for services performed, except in cases of goods therein-before directed to be sold as droits of Admiralty, whether in the case of ships' goods or other articles found at sea or cast on shore; and whether such services shall have been performed upon the high seas or within the body of a county, any thing in any act contained to the contrary notwithstanding.

7. Motion prior to the stat. 9 & 10 Vict. c. 99. for a monition calling upon the owner of a raft of timber found floating in Yarmouth Harbour to show cause why salvage should not be awarded for the rescue and preservation thereof, rejected,

on the ground that the Court had no jurisdiction over the subject-matter, the locality of the service being *infra corpus comitatûs*, and the provisions of the 3 & 4 Vict. c. 65. s. 6. not extending to such species of property. *Raft of Timber, Steward*, 2 W. Rob. 251.

## 3. In personal suits against the owners of property salvaged.

8. Proceedings for salvage may be by monition, calling on the owner to show cause why salvage is not due, as well as by proceedings *in rem*. *The Hope, Horncastle*, 3 C. Rob. 215. and notes.

9. In a claim of salvage, the ship salvaged being on her voyage, motion for monition, at the instance of the salvors, against the owner of the ship and cargo, to show cause why salvage should not be pronounced due, granted and monition decreed accordingly. *The Meg Merrilies*, 3 Hagg. 346.

10. A monition against owners of a vessel salvaged, to answer a salvage claim, decreed on motion founded on the affidavits of the salvors. *The Rapid, Cochrane*, 3 Hagg. 419.

11. The real foundation of the jurisdiction of the Court of Admiralty in salvage cases is by proceedings *in rem*, though there may be some cases of special circumstances where salvors have been allowed to proceed by monition; but generally the ship and freight are alone liable; and where they can be proceeded against, the Court is not disposed to regard salvors as having a right to follow cargo as prize goods may be followed, to abide the final adjudication. *Ibid.* 422.

See post, Note 29.

## 4. In suits against British and foreign ships of war.

12. Question raised, but not determined, whether a foreign ship-of-war lying in a port of this country is liable to the civil

the property pending the suit, or, if a sale be necessary, direct a sale to be made and divide the proceeds between the salvors and proprietors according to equity and reason. 1 *Park on Ins.* 304.

\* 8. In a case of salvage, where the parties on both sides, except the owners of the cargo of the salvor ship, were foreigners, and no protest was made to the jurisdiction, but merely an objection raised by counsel at the argument, it was considered that the considerations drawn from public convenience in favour of the jurisdiction greatly overbalanced those against it; and that, however it might be viewed when the jurisdiction of the

Court was protested against, there ought to be no doubt where the parties assented to it. *Mason v. The ship Blaireau*, 2 Cranch's (AMERICAN) Rep. 240.

† 9. Where a vessel had become derelict, but was afterwards recovered by the owners and was subsequently taken possession of by the receiver of droits under the act 9 & 10 Vict. c. 99., who refused to relinquish possession until his charges were paid, the Court declared it had no power to interfere, having no jurisdiction over the receiver. *The Tritonia*, 5 Notes of Cases, 110.

‡ This act is printed in the Appendix.

process of the Court of Admiralty in a cause of salvage at the suit of British subjects, or can be at all proceeded against in respect of such salvage services. *The Prins Frederick, Van Senden Commander*, 2 Dodson, 451.\*

13. The Court declined to interfere in a case of asserted salvage of a British ship-of-war in the service of Government. *The Comus*, cited in *Ibid.* 464.

#### 5. As to agents' advances and expenses.

14. The Court declined to take notice, for the benefit of an agent, of advances made by him on account of salvage to certain of the salvors, being minors and apprentices, under an agreement for the apportionment of salvage, which agreement was overruled by the Court. *The Louisa*, 2 W. Rob. 26.

15. The Court will refer a claim, if objected to, of agents' expenses as a deduction from a salvage award, to the consideration of the registrar and merchants. *Ibid.* 24.

#### 6. As to awards of magistrates and Commissioners of Salvage.

16. By 9 & 10 Vict. c. 99. s. 23., in case any person claiming salvage, or against whom such claim is made, or his agent, shall be dissatisfied with the award and decision of the Justices or their nominee, or of the Commissioners of Salvage, either of them may, within ten days after such award shall have been made, but not afterwards, notify to such Justices or Commissioners his desire of obtaining the judgment of the High Court of Admiralty respecting such salvage; and thereupon such person shall forthwith proceed by taking out a monition within thirty days from the date of such award; but in such case the receiver or officer of the Customs in whose custody the property salvaged shall have been detained is to release the same, or deliver it over to the owner, on bail being given by him or his agent in double the amount of the award; or if no sum shall have been awarded, in such amount as the receiver shall deem sufficient, which bail

the receiver is thereby authorized to take and certify, according to the form contained in the schedule, and transmit the same without delay to the Receiver General, together with a true certificate in writing of the gross value of the property salvaged, and also a copy of such proceedings and award on unstamped paper, certified under the hand of the receiver taking such bail; and the same shall be admitted by the said Court of Admiralty as evidence in the cause, and the receiver shall, for every such certificate, be entitled to receive from the owner of the property or his agents, or from the proceeds of the sale thereof, the sum of 1*l.* 1*s.*

17. By s. 24. in all cases decided under that act by any justices of the peace, or their nominee, or by the Commissioners of Salvage, the High Court of Admiralty shall only have jurisdiction as a Court of Appeal, in accordance with the provisions of that act, or for the purposes of enforcing payment of the sum awarded.

18. By 3 & 4 Vict. c. 65. s. 5. (which section is repealed by the above statute), where an award had been made by magistrates in a cause of salvage, the parties were not at liberty to resort to the Court of Admiralty for a distribution, unless an application for an order of distribution had been made in the first instance to the magistrates; and the application to magistrates must be made either at the time the award is made, or within fourteen days afterwards; and the appeal to the Court of Admiralty must also be made within fourteen days from the making of the award or payment of the money. A monition having been served on the owner of the salving ship, at the suit of the master and crew, to bring in the amount of salvage awarded (and which had been received and retained by him), to abide the decision of the Court with respect to its final distribution, on the appearance of the owner under protest against the jurisdiction of the Court, the protest sustained, and the suit dismissed. *The Hope*, 1 W. Rob. 265.

See post, Nos. 100. 353. to 357. and notes.

\* 10. This case was, after solemn argument, directed to stand over, when a memorial having been presented to the ambassador of the Netherlands, to whose sovereign the ship belonged, the matter was by him referred to Sir W. Scott (then Judge of the Court of Admiralty) to determine the amount of salvage due, and settled pursuant to his arbitration. See No. 194. post.

11. A public armed vessel of a foreign friendly sovereign, entering a port open for her reception on the terms on which ships-of-war are generally permitted to enter the ports of a friendly power, is not subject to the jurisdiction of the nation in whose port she lies. *The schooner Exchange v. M'Faddon*, 2 Cranch's (AMERICAN) Rep. 115.

## II. OF THE JURISDICTION OF MAGISTRATES IN CASES OF —

19. By 9 & 10 *Vict. c. 99. s. 21.* if any person shall have rendered any service (except ordinary pilotage) in the saving or preserving of any ship or vessel in distress, or of the cargo thereof, or of the lives of the crew, or of any wreck, goods jetsam, flotsam, lagan, derelict, &c., which shall not become droits of Admiralty; and such person, and the master or owner of such ship, cargo, or other article, or his agent, cannot agree upon the amount of salvage to be paid, then such person shall deliver to such master, owner, or agent, a statement in writing, without prejudice to either party, of the amount of salvage claimed; and (unless such salvage shall have been already paid by any receiver under the powers therein-before contained, or the claim thereto shall exceed 200*l.*) the matter may be determined by any two neighbouring justices of the peace within forty-eight hours after the reference thereof to their determination; and if they cannot agree, they may nominate a third person, conversant in maritime affairs, who shall ascertain the amount of salvage to be paid within forty-eight hours after his nomination; and the said justices and their nominee shall have full power to examine the parties or their witnesses on oath; and such nominee shall be entitled to demand of the owner, the salvor, or their agents, or out of the property salvaged, a sum not exceeding 2*l.* 2*s.*; and such owner, salvor, or agents, at the discretion of such justices or their nominee, are required to pay the same to such nominee immediately after he shall have made his award; and such sum and such amount of salvage may be recovered like penalties imposed by this act.

*See post, Nos. 77, 78.*

## III. OF THE JURISDICTION OF COMMISSIONERS OF SALVAGE IN CASES OF — \*

20. By 9 & 10 *Vict. c. 99. s. 22.* the Commissioners of the Admiralty may appoint, in such ports, towns, and districts as they may think proper, three or more proper persons for every such port, town, or district, to be called Commissioners of Salvage, any three of whom shall have

power to adjust and determine any difference respecting salvage in the same manner and in such cases as the justices mentioned in *s. 21.*; and also to appoint a proper person to act as their secretary or registrar, who shall enter in a book for that purpose all their proceedings and a copy of the awards made; and such Commissioners shall have the power of examining on oath, and the same powers as are therein-before given to justices and their nominee, and are authorized to demand from the owners or salvors of the property, who are thereby required to pay, such fee or reward for deciding any claim for salvage as shall be regulated by the Commissioners of the Treasury; and the Commissioners shall have power to commit for contempt.

## IV. OF THE JURISDICTION AS TO — WITHIN THE CINQUE PORTS.

21. By 1 & 2 *Geo. 4. c. 76. s. 18.* the boundaries of the jurisdiction of the Lord Warden of the Cinque Ports are defined.

22. By *s. 1.* the Lord Warden of the Cinque Ports may appoint three or more substantial persons in each of the Cinque Ports, two ancient towns and their members, as Commissioners, to determine differences relative to salvage within such jurisdiction; and they are to determine such differences within twenty-four hours after reference thereof to them, and to appoint a person as their secretary or registrar, who shall enter their proceedings, with copies of the award, in a book to be kept for that purpose. By *s. 2.* the Commissioners are to settle all claims of pilots, hovellers, boatmen, and others, for services of any description rendered to any ship within the jurisdiction aforesaid, and whether in distress or not; and for carrying cables, stores, &c., to any such ship; or for saving, within such jurisdiction, any goods wrecked, &c., the master or owners of such ship or goods, or their agents, being present at the sitting of the Commissioners; and the Commissioners may examine parties on oath, to be administered by the registrar. By 9 *Geo. 4. c. 37. s. 1.* the Deputy Warden of the Cinque Ports and Lieutenant of Dover Castle for the time being may also appoint such Commissioners.†

\* No Commissioners of Salvage have as yet been appointed.

† 12. *Quære*, whether the requisites of the stat. 1 & 2 *Geo. 4. c. 76.* providing that in proceedings for salvage before the Commissioners of Cinque Ports, a person should be present to represent the

owners, is a condition precedent, the non-compliance with which renders the judgment of the Commissioners of no avail, or a condition subsequent, the absence of which would not render the award null and void. *The David Luckie* (1840), 9 *Monthly Law Mag.* (Notes of Cases), 211.

23. By s. 3. the Commissioners are to be paid by the owners, &c., for their trouble such fees as shall be allowed by the Lord Warden; and no Commissioner shall act in any port beyond a mile from his residence.

24. By s. 4. in case either party shall be dissatisfied with any award of such Commissioners respecting salvage due, either of them may, within eight days after such award is made, but not afterwards, declare to the Commissioners their desire of obtaining the judgment of a Court of Admiralty respecting such salvage; and such parties shall thereupon be forthwith required by such Commissioners to declare whether he or they will proceed in the Court of Admiralty of the Cinque Ports, or the High Court of Admiralty of England; and he or they shall so proceed within twenty days from the date of such award, by taking out a monition against the adverse party; but in such case the Commissioners are empowered, notwithstanding, to permit the ship and her cargo to depart on her voyage, or to deliver such goods to the owners or their agents, on giving sufficient bail in double the amount of the sum awarded, to be taken by the Commissioners according to the form set forth in the schedule; and they are to transmit the same to the Court of Admiralty, together with a certificate in writing of the gross value of ship and cargo, or of the goods respecting which salvage shall be claimed, and also an official copy of such proceedings and award, certified by the secretary or registrar; and the same shall be admitted by the said Court of Admiralty as evidence in the cause.

25. By s. 5 on such appeal to such Court of Admiralty, its decision shall be final.

26. By s. 7. anchors, stores, goods, &c., found within the jurisdiction of the Cinque Ports, are to be deposited in either of the places therein mentioned; or the persons having possession of them shall be adjudged guilty of receiving stolen goods.

27. By s. 8. all wrecked goods, merchandise, &c., are to be deposited in like manner; by s. 9. the serjeants of the Lord Warden and their deputies may seize anchors, stores, &c., concealed within such jurisdiction, &c.; and by s. 11. those taken up within the limits of the Cinque Ports, though removed out of such limits, and deposit them

as aforesaid until proceedings shall be instituted against the same in the Court of Admiralty of the Cinque Ports, or the High Court of Admiralty.

28. By 9 & 10 *Vict. c. 99. s. 43.* nothing in that act contained shall extend to affect or interfere with the rights, privileges, or jurisdiction of the Cinque Ports, two ancient towns and their members, or of the Lord Warden thereof, or to repeal or interfere with the stat. 1 & 2 *Geo. 4. c. 76.*, regulating salvage within the Cinque Ports.

29. By s. 42. within the jurisdiction of the Cinque Ports every serjeant of the Lord Warden and his deputy shall have the same power and authority, and be liable to the same duties and services, as are therein-before enacted with respect to receivers of droits of Admiralty; and all provisions in this act contained relating to such receivers shall, within such jurisdiction, extend and apply to such serjeants and their deputies, save that the reports therein-before directed to be sent to the Receiver-General shall, within such jurisdiction, be sent to the Lord Warden; and every fee or gratuity to be paid to such serjeants or their deputies shall be regulated by the Lord Warden for the time being.

30. By s. 13. when it shall happen that on the sale of articles as therein-before directed, the proceeds shall, after payment of expenses, be insufficient to defray the salvage, if the same happen within the jurisdiction of the Cinque Ports, the deputy serjeant or other officer of the Lord Warden, in whose custody the articles shall have been, may send a report stating the circumstances to the Lord Warden, and the Commissioners of the Treasury, on receiving an application thereupon from the Lord Warden, are authorized to allow such sum as they shall deem sufficient to be paid out of the Exchequer by way of salvage.

#### V. OF THE PARTIES ENTITLED TO BE CONSIDERED AS SALVORS — ET CONTRA.\*

##### 1. *Generally.*

31. A salvor is a person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a

\* 13. A party not actually engaged in effecting a salvage service is not entitled to a salvage remuneration. 1 *Park on Ins.* 313.

volunteer adventurer, without any pre-existing covenant connecting him with the duty of employing himself for the preservation of that ship. *The Neptune, Clark*, 1 Hagg. 236.

32. All salvage, whether civil or military, is founded on the equity of remunerating private and spontaneous services rendered in the protection of the lives and property of others. The Court cannot safely introduce other persons to share with the salvor (who was in this instance the recaptor from pirates) on constructive grounds. Such extension must be made by statute or other competent authority. The Court of Admiralty has no such authority. *The Calypso*, 2 Hagg. 218. 220.

33. Salvage in its simple character is the service which those who recover property from loss or damage at sea render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal in its primary character at least, and those who are so employed in the service are those whom the law considers as standing in the first degree of relation to the property and to the proprietors. This is necessary for the protection of the owner, who ought not to be burthened with artificial claims. The Court looks primarily to the actual salvor, and has uniformly rejected all claims founded on prerogative rights, as of the Lord High Admiral in former times, of lords of manors, magistrates, and flag officers, except with reference to assistance substantially and beneficially afforded. *The Thetis*, 3 Hagg. 48. 58. 63.

34. In a case of salvage effected by King's ships, claim of the captain, officers, and crew of a King's ship which was not engaged in the service, to share generally with the salvors in respect of draughts of

men and stores, and of the schooner and launch from that ship, supplied by them and used in effecting the salvage service, rejected, and their right to share limited to that portion of the crew actually engaged in the salvage service. *Ibid.* 61.

35. The claim of a vessel to salvage is not affected by the fact of her being in the employ of Lloyd's agent. *The Traveller, M'Clear*, *Ibid.* 372.

See post, Nos. 81. 196. 236.

## 2. Parties on board vessels saved.

### (a) The crew.

36. The general rule is very strong and inflexible, that mariners are not permitted to assume the character of salvors, but extraordinary circumstances might induce the Court to recognise their claim in that character. *The Neptune, Clark*, 1 Hagg. 237.\*

See post, Note 55.

### (b) The passengers.†

37. Claim for salvage of a passenger (a lieutenant in the Royal Navy), rejected on the ground that where there is a common danger it is the duty of every one on board to render all the assistance he can. *The Branston, Wilson*, 2 Hagg. 3. n.

38. A passenger who took the command of a ship abandoned by the crew and brought her safe into port, and to whom the owners afterwards acknowledged she was saved by his exertions, *Held* entitled to salvage; 400*l.* awarded as salvage. *Newman v. Walters* (1804), 3 B. & P. 612, Abb. Sh. 560.

## 3. Agents.

39. A person having been appointed under a power of attorney of the master,

\* 14. If a vessel in distress be abandoned at sea by the master and all the crew, excepting one man, who is left by accident or design, he is discharged from his contract as a mariner of that vessel, and may entitle himself to salvage. *Mason v. The ship Blaireau*, 2 Cranch's (AMERICAN) Rep. 240.

15. Seamen of the saved ship, in the ordinary course of things, in the performance of their duties are not allowed to become salvors, whatever may have been the perils, hardships, or gallantry of their services in saving the ship and cargo; but extraordinary events may occur in which their connection with the ship may be dissolved *de facto*, or by operation of law, or they may exceed their proper duty, in which cases they may be permitted to claim as salvors. *Mobart et al. v. Drogan et al.*, 10 Peter's (AMERICAN) Rep. 108.

† 16. A passenger is not obliged to take on himself an extraordinary responsibility in the conduct of the ship, and if requested by the master and crew to do so, he is entitled to compensation. 1 *Park on Ins.* 303.

17. In case of danger and distress, it is the duty, as well as the interest, of the passenger to contribute his aid according to his ability, and he is entitled to no compensation for so doing. He is not, however, bound to remain on board in time of danger, but may leave the vessel, if he can; much less is he required to take upon himself any responsibility as to the conduct of the ship. If, therefore, he perform any extraordinary services, he becomes entitled to remuneration for such services. *Dana's Seaman's Manual*, 197.



"true and lawful attorney irrevocable, in the name of the master and on his behalf to use all possible means for the recovery of ship and cargo, and to perform all lawful acts necessary concerning the premises;" and such appointment having been afterwards adopted by the owners of the principal part of the cargo, a claim for salvage made by such person in respect of services rendered to the ship by him acting under such power, *Held*, upon the evidence, to be limited and controlled, as made under such character of agent, and the jurisdiction of the Court to entertain a claim of salvage made in such a capacity pronounced for. 225*l.*, in addition to 815*l.* 15*s.* 6*d.* disbursements, awarded out of 4500*l.*, the value of the property salvaged, with costs. *The Happy Return*, *Woolcock*, 2 Hagg. 198.

40. A person who under an agreement with the master of a stranded vessel had taken charge of the ship, and had succeeded in saving and warehousing a portion of the cargo, the vessel having gone to pieces, *Held* entitled to a salvage remuneration, although his services were to be considered in the light of a meritorious and successful agency, rather than of salvage services. *The Favorite*, *Lambert*, 2 W. Rob. 255.

#### 4. Officers and ships in the Government service.\*

41. A King's ship is entitled to civil salvage for services rendered to a vessel in

distress, in addition to military salvage for her recapture from the enemy. *The Louisa*, *Higginbotham*, 1 Dodson, 317.

42. King's ships may acquire a title to civil salvage, by assistance rendered to vessels in distress, even where that distress does not arise from the dangers of the sea, and where the assistance is not of a maritime kind; but such services must be very splendid and extraordinary to entitle them to a salvage reward. *The Francis and Eliza*, 2 Dodson, 117.

43. There is an obligation upon King's ships to assist the merchant vessels of this country, but they are entitled to salvage remuneration for services rendered. *The Mary Ann*, *Ferrier*, 1 Hagg. 158.

44. Persons employed in the public service have a peculiar duty to render aid to the trade of the country. They should manifest a peculiar readiness to do so. *Quere*, at a less remuneration than others? *The Clifton*, *Lightbody*, 3 Hagg. 121.

45. The public force of the country is not to be employed gratuitously in the salvage of property of private individuals, to save them from expense. Government steamers are kept for the public service, and the officers in command cannot employ them in the service of individuals, and thus risk the public property, without authority or an indemnity for all expense and damage; nor are they then to hazard their lives or undergo labour without reward, though they are entitled to a lower rate of remuneration than private salvors. *The Lustre*, *Finlay*, *Ibid.* 155.

\* 18. It is the duty of officers and crews of cruisers and coast guard stations to render all possible assistance to vessels in distress, and in cases of shipwreck to use their utmost endeavours to save the lives of the persons on board, and to save and protect from plunder and embezzlement the rigging, sails, stores, and cargo. On such occasions they are, equally with all others of her Majesty's subjects, entitled to a fair and reasonable remuneration in proportion to the value of their services, but they will be in the highest degree culpable in enforcing any demand by the detention of property, or by any other means than those which the law authorizes, and where other assistance can be procured it is by no means desirable that the coast guard should be employed in any other way than as a guard and protection against plunder. *General Instructions for the Coast Guard of the United Kingdom*, issued by the Comptroller General (anno 1841), art. 30. ss. 1, 2. When the coast guard are employed solely for the protection of the revenue, and not as salvors, they will have no claim on the owners of the property. *Ibid.* s. 4.

19. Persons in the public service are not bound to render salvage assistance. The coast guard are

appointed for a different purpose, to protect the revenue and prevent smuggling, and though paid by the public, they are not, any more than her Majesty's ships-of-war, bound to render such services. It is sound policy on the part of owners and underwriters to encourage such assistance by liberal rewards, as being clothed with the character of public officers they are on these occasions extremely efficient in keeping order, preserving property put on shore, and preventing plunder. *The Ocean* (1838), 2 Monthly Law Mag. (Notes of Cases), 441.

20. Where salvage assistance is rendered by vessels belonging to her Majesty, and there is personal risk and labour, her Majesty's officers and seamen are entitled to be rewarded precisely in a similar manner, on the same principles, and in the same degree, as where any other persons render that service; but with regard to the use of the vessel, a different consideration would apply, and a less remuneration would always be made on account of the vessel being the property of the country, and the property of owners under these circumstances never being risked. *The Iodine*, 3 Notes of Cases, 141.

46. The claim for salvage of an officer of the coast guard, who sent his men and boat, but did not assist in person, rejected. *The Vine, Jay*, 2 Hagg. 1.

47. In a case of salvage effected by King's ships, the Admiral of the station, who had contributed effective salvage assistance beyond the performance of his mere official duties, *Held* to be entitled as a salvor. *The Thetis*, 3 Hagg. 61., 2 Knapp, 409.

48. *Quære*, is not every acquisition distributable to the officers and crews of his Majesty's ships and to marines in the first instance acquired for the Crown? Could prize agents, the only persons authorized to make distribution in such cases, compromise any such rights without the consent of the Crown? And could not the Crown claim, in cases of salvage effected by servants of the Crown in its pay and on board its ships, the amount of salvage and its appropriation for public purposes? *Ibid.* 3 Hagg. 233.

*See ante*, No. 37. and *post*, Nos. 250. to 255.

#### 5. Other parties.\*

49. If a magistrate acting in his public duty should go beyond the limits of his official duty in giving extraordinary assistance, he would be entitled to a salvage reward. *The Aquila, Lunsden*, 1 C. Rob. 46.

50. One of a ship's company who refused to concur with the rest in undertaking a salvage service, *Held* not entitled to any share in the salvage awarded. *The Baltimore, Baker*, 2 Dodson, 137.

51. Women may entitle themselves to a salvage reward. *The Jane and Matilda, Chandler*, 1 Hagg. 194.

52. A person merely hiring labourers to assist in the unloading of a stranded vessel, although entitled to his disbursements and to some remuneration for his superintendence, will not be entitled to claim as a salvor. *The Watt*, 2 W. Rob. 70.

53. By 8 & 9 Vict. c. 87. s. 79. persons giving information of spirits in casks of less than twenty gallons floating or sunk in the sea shall receive such rewards as the Commissioners of Customs shall direct; but by s. 78. they may not intermeddle with or take up the same.

54. By 9 & 10 Vict. c. 99. s. 6. receivers of droits and officers of Customs seizing

any wreck, goods jetsam, flotsam, lagan, or derelict, or other article or droit, not reported or dealt with as required by that act, shall be entitled to salvage; and if such seizure shall be made on information, the informer shall be entitled to such salvage as the receiver of droits shall allow.

PILOTS, *see post*, Nos. 270. to 282. and notes.

#### VI. WHAT SERVICES AMOUNT TO — *ET CONTRA*.

##### 1. Towage, where amounting to — *et contra*.

55. To estimate a salvage service, all the circumstances must be taken into consideration in a combined view. If towage lead to the rescue of a vessel from danger, it should be remunerated as salvage; or if an engagement even be made in port to go out and tow, unforeseen circumstances might convert such towage into a salvage service. *The Isabella, Monro*, 3 Hagg. 428.

56. Mere towage service is confined to vessels that have received no injury or damage, and mere towage reward is payable in those cases only where the vessel receiving the service is in the same condition she would ordinarily be in without having encountered any damage or accident. In a claim of salvage preferred by a steam tug for towing a vessel in a disabled state from the Maplin Sand to the West India Docks, 80*l.* on a value of 8000*l.* awarded. *The Reward, Hogg*, 1 W. Rob. 174.

57. In a claim for salvage, a tender of 2*l.* confirmed with 5*l.* *nomine expensarum*, the Court holding the case to be one of mere towage, and twenty-nine co-salvors having accepted similar tenders. *The Albion, Burrell*, 2 Hagg. 180. n.†

*See post*, No. 197., notes 42, 43., Nos. 263. to 266.

##### 2. Pilotage, where amounting to — *et contra*.

58. Claim of salvage by coast pilots and boatmen in respect of services, for which 15*l.* had been tendered by the owners, pronounced against, and tender upheld on the ground that there had been a want of exertion and of a proper attempt, to get off sooner to the vessel, which was off the coast for two days before any assistance was rendered, and that the services rendered were of a pilotage nature only, there being

\* 21. It is the duty of a British consul to claim and recover all wrecks, cables, and anchors belonging to British subjects, to pay the usual salvage, and report a communication thereof to the Trinity Board. *Fynn's British Consul's Handbook*, 14. 51.

† 22. Mere towage service is confined to towing a vessel in no degree disabled. *The Elizabeth Holderness*, April 29. 1846.

*See distinction in two cases where salvage as per Towage Law & equity, Report (1853)*  
*See also note on 1st vol of*

no danger and the weather moderate when the salvors put off to the vessel. Salvors' costs allowed by the Court, though condemning the neglect of the salvors to put off earlier to the vessel, and notwithstanding a charge asserted, but not satisfactorily proved, that the salvors had prevented another boat's crew from coming off earlier to the assistance of the vessel. *The City of Edinburgh, Fraser*, 2 Hagg. 333. 337.

59. In a claim for salvage for having piloted a foreign vessel out of an unfrequented channel, the weather being fine, the vessel uninjured and preparing to anchor, knowing her situation, *Held*, that a case of pilotage only, not salvage, was made out, and suit dismissed, but without costs. *The Funchal Baptiste*, 3 Hagg. 386. n.

60. Where a dispute arises as to whether a signal hoisted was for a pilot or a signal of distress, the fact is to be determined by the state of the vessel itself at the time. *The Dosseitei*, 10 Jur. 866.

*See post*, Nos. 270. to 282., note 44.

### 3. Other services.

61. Salvage is not due to the crew of a ship for rescuing it from mutineers. *The Governor Raffles, King*, 2 Dodson, 14.

62. A King's ship *Held* not to be entitled to salvage for rescuing a convict vessel from the possession of the convicts and of the mutinous crew and soldiers on board her, no great danger or personal exertion having been incurred, but costs of asserted salvors allowed. *The Francis and Eliza*, *Ibid.* 115.

63. Claim for salvage for bringing into port a barge found (without anchor or crew) on a sand where it was a common usage to leave barges, rejected, but under the circumstances without costs. *The Upnor, Hadlow*, 2 Hagg. 3.

64. The circumstance of the crew of a revenue cutter going on board a derelict for the protection of the revenue will not make them salvors. *The Queen Mab, Tallman*, 3 Hagg. 243.

65. Claim of a Deal boatman (intervening in a salvage suit), for salvage services antecedently, rejected, no effective service being shown to have been rendered. Decision affirmed on appeal. Costs not asked for. *The Branken Moor, Richards*, *Ibid.* 373.

66. In a claim for salvage to a dismasted vessel at anchor, the salvors having refused to quit her, and obstructed the master and agent in taking her into harbour by a hired steamer, the Court, holding that no services

amounting to salvage had been rendered, and that the salvors had misconducted themselves, pronounced for 30*l.* tendered, as they had been employed in carrying the master and messages, and condemned them in costs from the time of their refusal. *The Black Boy, Derey*, *Ibid.* 386. n.

67. An attempt, however meritorious to save a vessel and cargo, will not, if unsuccessful, furnish any title to a salvage reward. *The Zephyrus, Blake*, 1 W. Rob. 330.

*See ante*, Nos. 42. 52. to

54., and *post*, Nos. 70. 113.,

notes 33. 37., Nos. 133. 139.

150. 161. 171. to 175. 196.

210. 247. 301, 302., note 63.

## VII. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF SALVORS UNDER THE STAT. 9 & 10 VICT. c. 99.

68. By 9 & 10 Vict. c. 99. s. 14. when any ship or vessel shall be in distress, stranded, or run on shore, or in danger thereof, all receivers, justices of the peace, mayors, bailiffs, constables, officers of corporations and port towns, and of Customs and Excise, &c. shall call together as many men as are necessary to the assistance of the ship and cargo, or for the saving human life; and if there shall be any British ship or vessel, or any waggons, carts, and horses near the place, such officers or any of them are thereby required to demand assistance by boats or men from such vessels, and the use of such waggons, &c. for such purposes; and persons not complying immediately with such demands shall be liable to a penalty not exceeding 100*l.*

69. By s. 15. for the prevention of confusion among persons assembled to save any ship or vessel in distress, her cargo or goods, all persons so assembled shall conform in the first place to the orders of the master, owner, or officer in charge of the ship in distress; and in the next place to those of the receiver, and for want of their presence, to those of the officers thereafter mentioned, in the subordination there mentioned, according as any of such officers shall be present; and any person acting contrary to such orders shall on conviction before a justice of peace pay a sum not exceeding 50*l.*

70. By s. 17. the receiver of the district, the owner or master of any ship or cargo in distress, the officers of Customs, &c. and others engaged in assisting or recovering such vessel, goods, or wreck, or in saving the lives of the crew, may for such purposes, or to take possession of such pro-

perty, pass and repass with their horses, carriages, servants, &c. over any lands, wharfs, &c. near such part of the coast without obstruction from the owner of such land, &c., provided there shall be no road equally convenient; and may also place any timber or other parts of wreck, or any goods or other article so rescued or found upon any such land, &c. for a reasonable time until they can be removed to some place of deposit, doing as little damage as possible, and making compensation for the same, such compensation to be a charge on the property saved, the same as salvage, and in case of disagreement to be settled in the same manner as salvage. By s. 18. any occupier of land or premises impeding such parties in so passing over or depositing such property on his land or premises shall be liable to a penalty of not exceeding 100*l*.

72. By s. 5. all persons finding or in possession of wreck or goods jetsam, flotsam, lagan, or derelict, or any boat, vessel, apparel, anchor, tackle, stores, or any goods, merchandise, or other article whatsoever, which shall have been found at sea or elsewhere, in any tidal water or cast on shore, whether above or below high-water mark, and wholly or partly on land or in the water, or any drojt of Admiralty of any description, shall, whether entitled thereto or not, send a report in writing thereof to, and place the same at the disposal of, the neighbouring receiver of droits, or collector or comptroller of Customs; and every such officer of Customs shall forthwith transmit the same to the nearest receiver of droits; and every person who shall keep possession of any such property, or deface or alter the same, shall forfeit all claim to salvage, and be liable to a penalty of not exceeding 100*l*., and also to pay double the value of the articles to the owner, if claimed, and otherwise to the Crown.

72. By s. 30. in case the master, mate, crew, or passenger of any ship shall find or take on board or in tow any ship, boat, anchor, cable, goods or other article, or shall receive any such from any other person who may have found them, knowing the same to have been so found, such master, &c. shall on the return or arrival of such ship in any port of the United Kingdom, and within twenty-four hours thereof, place such article at the disposal of the nearest receiver to such port, with a report in writing, containing an accurate description of the article, the marks thereon, and the time and place where it was found or taken on board; and such receiver shall

transmit the same to the secretary at Lloyd's, to be hung up for inspection; and if the article shall not be claimed by the owner or his agent within twelve months after the transmission of such report, it shall be sold by the receiver, and the proceeds be dealt with in the manner thereinbefore directed with respect to other unclaimed articles; and if the master or other person shall not so report, &c. such articles, he shall forfeit all claim to salvage, be liable to a penalty of 100*l*., and pay double the value of the article to the owner or the Crown, which may be recovered like penalties under this act.

73. By s. 19. every person (except the receivers of droits under this act) acting or employed in any way in the saving or preserving of any ship or vessel in distress, or any part of the cargo, or of the life of any person on board, or in the saving or preserving of any wreck, goods jetsam, flotsam, lagan, or derelict, or of any stores, tackle, &c., shall within fourteen days after the performance of such service, or within fourteen days after the owner or other person shall have established his claim to the property as directed by the act (see ss. 9. and 10.) be paid a reasonable reward or compensation by way of salvage for such service by the owner, commander, or other officer or mariner of such ship, or their agent, or by the owners of cargo saved, or by the owner or claimant of such other articles, and in default thereof the said ship or vessel, or any part of the cargo on board so saved, shall remain in the custody of the High Court of Admiralty; and the said goods or other article (and also until warrant issued from the High Court of Admiralty the said ship, vessel, or cargo) shall remain in the custody of the receiver or officer of Customs until every such salvor shall have been reasonably compensated for his assistance or trouble, or reasonable security given for that purpose to the satisfaction of such receiver, officer of Customs, or of the High Court of Admiralty; and every receiver engaged in the saving or preserving of any ship or vessel in distress, and which shall not become a drojt of Admiralty, shall be entitled to receive from the owner 2*l*. for the first day, and 1*l*. for each succeeding day on which he shall be employed in such service, if the ship and cargo shall be of the value of 600*l*.; and if under such value he shall receive a moiety of such allowance per day, and the ship or vessel shall be so detained as aforesaid until payment of such sums.

74. By s. 26. any party claiming to be

entitled to any sum paid for salvage services to, and undistributed by, any appointee of the Justices, Commissioners or arbitrators making the award, or under any agreement, or in default thereof to the master or owner of the salving ship or boat, or the nominee of the salvors, may within twelve months after such payment have the same remedies for the recovery thereof from such appointee as are (by *s. 25.*) provided for the recovery of shares, in any sum paid for salvage services after adjudication of the distribution thereof.

75. By *s. 45.* every person wrongfully carrying away or removing any part of any vessel in distress, wrecked, stranded, or cast on shore, or any goods or other article belonging thereto (or unless a receiver or other officer or justice therein-before authorized to give orders in cases of wreck), entering or endeavouring to enter on board any such vessel without the consent of the master or superior officer thereof, or of a receiver or other officer authorized to give orders in cases of wreck, or molesting or impeding any person employed in saving such vessel or goods, shall forfeit 50*l.*; and where such person shall have been detained or taken before a justice of peace for such offence, such justice may proceed summarily in the case, convict the offender, and in default of payment commit him to gaol, with or without hard labour, for any time not exceeding six months; and masters or inferior officers of ships so in distress, &c., or the receiver or other officer authorized to give orders, may repel by force any such person as shall without such consent press on board any such vessel.

76. By *s. 6.* any receiver of droits or officer of Customs may by virtue of a warrant to be obtained from any magistrate, search for, seize, and detain any wreck, goods jetsam, flotsam, lagan, or derelict, or other article or droit in such act referred to, which shall not have been reported or dealt with as directed by that act, either on shore, stranded, or afloat, and for that purpose enter any house, store, or building, or any ship, vessel, or boat; and every officer of Customs so seizing shall forthwith send to the nearest receiver a report in writing thereof; and every such receiver or officer so seizing

shall be entitled to salvage for such articles; and if such seizure shall be made in consequence of information, the informer shall be entitled to such a reward out of the salvage as the receiver general of droits shall allow; and when any such articles or droits of Admiralty found within the jurisdiction of the High Court of Admiralty shall be carried away out of such jurisdiction within the limits of the Cinque Ports or elsewhere, any receiver of droits may seize and carry away the same, to be dealt with as by this act directed.

77. By *s. 36.* any penalty imposed by this act may be recovered by information or action of debt in any of her Majesty's Courts, or by information or complaint before any neighbouring justice or magistrate, and (except where the contrary is so expressed) one half of such penalties shall go to the informer, and the other half to the Receiver General of Droits of Admiralty, to be applied by him like proceeds of droits; and in case any of such penalties on conviction by any justice or magistrate shall not be immediately paid, with the charges incident to the conviction, the same shall (except as therein-after mentioned) be levied, by warrant of such justice or magistrate, on the goods of the offender; and in case no sufficient distress shall be found there, the offender shall be committed to gaol, with or without hard labour, in case of any first offence for any period not exceeding six months; and in case of any second or further offence, for any period not exceeding twelve months, unless the penalty and charges shall be sooner paid; and such conviction shall be in the form therein mentioned; and no certiorari or other process for the removal of such conviction for proceedings thereon into any of her Majesty's Courts of Record at Westminster or elsewhere shall be allowed.

78. By *s. 37.* any person so convicted by any justice or magistrate may within three months appeal to the justices in quarter sessions.

#### VIII. OF THE RIGHTS OF SALVORS.\*

##### 1. Owners of salving vessels.

79. Owners have a sufficient interest to entitle them to oppose a claim of a

\* 23. The owner of a salving vessel is not an unfit person to originate a suit for salvage. *The Haidee*, 1 Notes of Cases, 598.

joint salvor. *The Blendenhall, Barr*, 1 Dodson, 417.

80. Owners of a salving vessel are entitled to receive the value of sails and stores supplied from the salving vessel, and also the amount of any other loss or expense which they may fairly have incurred, but they are not justified in preferring such a claim through a separate proctor and counsel, and thereby putting the owners of the vessel salvaged to an additional and unnecessary expense. Costs allowed, but directed to be strictly taxed. *The Baltimore, Baker*, 2 Dodson, 138.

81. It is a general rule, that a party not actually occupied in effecting a salvage service is not entitled to share in a salvage remuneration. The exception which not unfrequently occurs to this rule is in favour of owners of vessels which, in rendering assistance, have either been diverted from their proper employment or have experienced a special mischief, occasioning to the owners some inconvenience and loss, for which an equitable compensation may reasonably be claimed. *The Vine, Jay*, 2 Hagg. 2.

82. The general principle of law is, that the claim of owners to salvage is generally very slight, unless from the circumstances of the case their property becomes exposed to danger, or they incur some real loss or inconvenience. In a case where there was no danger to the salving vessel, a whaler, but where she had been detained by such service with a consequential risk, damage and expenses, claim of the owners to salvage *Held* to be well founded. *The Jane, Hudson*, Ibid. 343.

83. In cases of large value, and where the services rendered have been attended with risk to the property of the owners of the salving vessels, the Court, both in civil and military salvage, will allot a portion to the owners, but *aliter* where there has been no risk or damage to their property. *The Salacia, Garland*, Ibid. 264.

84. To entitle owners of a salving vessel to a primary lien on the property salvaged for compensation for losses, such losses must be actual. If speculative merely and consequential, they are only ingredients in

estimating the salvage remuneration, of which they receive an allotment. *The Martha, Viner*, 3 Hagg. 436.

## 2. Of the relative rights of co-salvors.

85. Salvage, effected by part of the crew of a vessel, the whole except one being willing, and having assented to undertake the service, enures to the benefit of the whole crew, saving such one person, who by reason of his refusal is entitled to no remuneration. *The Baltimore, Baker*, 2 Dodson, 137.

86. The crew of another vessel on board the salving vessel, and working with the crew thereof in effecting the salvage, are entitled to some, but to a very moderate reward; 50% out of an award of 1500% allotted to them. *The Salacia, Garland*, 2 Hagg. 269. 271.

87. Part of the crew of the salving vessel, who put off in their boat to the vessel salvaged at great risk, the sea being very tempestuous at the time, *Held* entitled to a larger share in a salvage award than the remainder of the crew, who consented to the attempt, and risked for that purpose their common interest in the voyage (a whaling one) on which the salving vessel was bound. *The Jane, Hudson*, Ibid. 343.

88. When two vessels come up together to render assistance to a ship in distress, all the persons composing the crews, although a part only are actually employed, are entitled to be considered as salvors. *The Mountaineer, Heaton*, 2 W. Rob. 7.

89. It has been the rule of the Court of Admiralty from time immemorial to allow persons who remain on board a salving ship to be considered as co-salvors, although the Court has repeatedly made a distinction in favour of those persons who have actually incurred the difficulty and peril of the salvage enterprise. *The Sarah Jane*, Ibid. 115.

## 3. With reference to second salvors.\*

90. A salvor who is in possession has a lien, a qualified property in the thing saved; and where a salvage is in the act of performance and under means sufficient, no other party can interfere with assistance

\* 24. If one set of salvors have got possession of a wreck, another set of salvors have no right to interfere without a proper cause. But if persons are found in possession who are not competent or to be trusted, interference is justifiable. 1 *Park on Ins.* 302.

25. If salvors, in effecting a salvage service, themselves fall into distress and are relieved by

other salvors, they do not lose their original right to salvage, but the second partake in the salvage only according to their merit. Second salvors cannot lawfully make it a condition of giving assistance, that the original salvors shall abandon all claims to salvage. *The Henry Ewbank and cargo*, 1 Sumner's (AMERICAN) Rep. 400.

that is unsought and not needed. *The Maria, Kilstrom*, Edwards, 175.

91. Salvors in possession of a ship have a legal interest which cannot be divested before adjudication in a competent Court, and neither King's officers nor any other persons are entitled, on the ground of superior authority, to dispossess them without cause; such parties claiming as joint-salvors must show an apparent, if not an actual necessity for their interference; such asserted joint-salvors dispossessing original salvors without such apparent necessity are not entitled to any benefit for their exertions, which enure to the profit of the dispossessed salvors, who would otherwise have performed such services. *The Blendenhall, Barr*, 1 Dodson, 417.

92. The Court is always jealous in maintaining the rights of original salvors, unless it appear that further assistance was necessary for the preservation of the property. *The Charlotta, Nesser*, 2 Hagg. 361.

93. Salvors in possession have a right to refuse assistance, if they think themselves sufficient to effect the service. No other vessel, except from strong necessity, has a right to interfere in the salvage. *The Effort*, 3 Hagg. 167, 168.

94. Unless a necessity for further assistance be shown, no party other than the first salvor in possession has a right to interfere. *The Queen Mab, Tallman*, Ibid. 243.

95. Salvors going to the assistance of a vessel in distress do not acquire the sole management of her. They only act under sufferance and permission, except in the case of a derelict. There the first occupant has, if equal to the service, a right of exclusive possession. He takes possession for the benefit of the Crown in the first instance, but subject to a liberal remuneration. *The Dantzic Packet, Tanner*, Ibid. 385.

96. In general, when the services of salvors have been accepted, they cannot be dispossessed by subsequent salvors. *The Glasgow Packet, Nicoll*, 2 W. Rob. 306., 8 Jur. 675.

97. In conflicting claims of salvage the *onus probandi* lies on the salvors who come afterwards to assist those in possession, to show most clearly an adoption of their services, or an incompetency in the first occupants to effect the salvage; an absolute necessity for their interference. A mere acquiescence in, or submission to, such assistance of second salvors by first salvors under the influence of superior

numbers, *Held* not to found the second salvor's claim, and the necessity required to be shown, not to have been strictly made out by them. *The Eugene Bourne*, 3 Hagg. 160.

98. Two fishing smacks, the *Perseverance* and the *Ceres*, descried a wreck at a distance. The *Perseverance* stood towards it, found it to be a derelict, and took it in tow. An hour afterwards the *Ceres* came up, proffered assistance which was accepted, and both vessels proceeded to tow the wreck together. Two hours after this a gun-brig came up and dispossessed the fishing vessels, and claimed as sole salvor. *Held* that the question of merit or demerit on her part must depend on the preliminary question whether her assistance was wanted or not, and it not appearing that there was any necessity for her assistance, the Court pronounced for the claims of the fishing vessels, and awarded two fifths, after deducting expenses, to the salvors, the salvage not being one attended with great labour or danger; fifty guineas allowed to the crew of the gun-brig, the Court inferring that the commander acted under an impression that his interference was necessary. *The Maria, Kilstrom*, Edwards, 175.

99. Claims of salvors who dispossessed original salvors pronounced against, the circumstances being *Held* not to constitute an apparent necessity for their interference. *The Blendenhall, Barr*, 1 Dodson, 420.

100. A first set of salvors who, while in possession, were assisted in the service by a second set of salvors, *Held* nevertheless to have a primary interest, and therefore a right to choose their own jurisdiction (*viz.* whether to proceed for an award by magistrates or by a suit in the Court of Admiralty). They having elected to proceed before magistrates, the second salvors, who instituted proceedings in the Admiralty Court, *Held* to have acted improperly in so doing, and in not intervening in the proceedings before the magistrates as their proper course. *Quare*, if parties have equal rights, would a resort to the subordinate jurisdiction, when objected to, be proper? *The Eugene, Bourne*, 3 Hagg. 159, 160.

101. A salvage reward is for benefit actually conferred in the preservation of property, not for meritorious exertions alone. *The India*, 1 W. Rob. 406.

102. A set of salvors who rendered assistance during a whole day to get a vessel off a sand on which she had got, but without

success, afterwards left, taking with them the whole of the crew of the stranded vessel, without expressing any intention of returning thereto. A second set of salvors then took possession of the vessel and succeeded in getting her off the sand; eight of the first salvors afterwards returned and claimed to join in rendering assistance, which, however, was refused. The Court upon the whole *res gestæ* of the case was of opinion that the first salvors had abandoned the vessel without any intention of returning thereto, and that the second salvors rightly resisted their claim to join in rendering assistance, and therefore pronounced against the claim for salvage of the first salvors, but without costs. *Ibid.*

#### 4. To bring derelict vessels into English ports for adjudication.

103. A vessel on her Majesty's service and bound to Heligoland having discovered a vessel derelict, *Held* to have acted right in taking the vessel salvaged to Heligoland instead of bringing her into an English port, especially as the ship's papers could not be found. *L'Esperance, Stegman*, 1 Dodson, 48.

104. It is desirable and more correct in cases of salvage, and *semble* of a foreign vessel derelict and rescued from pirates by British subjects, that the vessel should be brought for adjudication into an English port. *The Calypso*, 2 Hagg. 212.

#### 5. Of the lien of.\*

105. In some cases salvors have the right to retain possession in order to secure to themselves the compensation due. *The Glasgow Packet, Nicoll*, 8 Jur. 675., 2 W. Rob. 306.

106. The Court will issue an attachment against salvors seeking to retain possession of a vessel after the production to them of the supersedeas. When a supersedeas issues, instantaneous obedience must be paid to it. *The Towan*, 8 Jur. 222.

107. Where a ship was transferred when

at sea to a vendee resident in the port where she was registered, and money was paid by the vendee's agents under the sentence of a foreign Court for salvage and wages of the crew, *Held* that the salvage and mariners' wages were a lien on the ship. *Richardson v. Campbell*, 5 B. & A. 203. n.

108. A vessel having run ashore on the coast of Essex was assisted by the owner of a smack, who put down an anchor and a hawser attached to the vessel for the purpose of securing her. The smack then left her for the purpose of carrying away some of her stores, with the intention, however, of returning. The owner of another smack came to her afterwards, and finding no one in or near the vessel, and her deck under water, took away the anchor and hawser and delivered them up to the deputy Vice-Admiral of Essex. *Held* that the anchor and hawser were not parted with or left abandoned within the meaning of the 1 & 2 Geo. 4. c. 75. s. 1., and that the deputy Vice-Admiral was not justified in detaining them until salvage was paid, or security given for its payment. *Heathorn v. Darling*, 1 E. F. Moore, 5.

109. The deputy Vice-Admiral, who received an anchor and hawser, alleged to be left at sea, from the finder, refused on application by the real owner to deliver them up until the salvage was paid, or security given for the payment of it. *Held* that this was a conversion, but if he had merely refused to deliver them up until it was ascertained whether salvage was due or not, it would not have amounted to a conversion. *Clark v. Chamberlain*, 2 Mee. & W. 78., 2 Gale, 217.

*See antè, No. 84. and post, No. 129.*

#### IX. CLAIMS FOR — WHERE BARRED — ET CONTRA.

##### 1. Generally. †

110. By 7 & 8 Vict. c. 112. s. 5. no clause,

\* 26. The law of England has provided that salvage shall be a lien upon the goods saved. *Cross on Liens*, 291., and see the cases there cited, 1 *Park on Ins.* 301. And the salvors may keep them until recompense has been made to them. *Smith's Merc. Law*, 295.

† 27. To assist the right of the salvor, he has a lien on the property saved at sea, though it would be otherwise in a river (2 *Hen. Black.* 294., 1 *Ld. Raym.* 393., 8 *East*, 57., 1 *Saund. Rep.* 265.), and he may retain the same until an adequate tender has been made, after which, however, he will be liable

to an action of detinue or trover, and to damages as well as costs. It is not, however, generally necessary to assert the right of lien, and where the ship is British and the owners responsible, it is always better not to do so, but to prosecute the claim for salvage in due course in the Admiralty or otherwise. 2 *Chitty's Gen. Prac.* 531.

† 28. Of the lien of salvors on property salvaged until salvage compensation has been made, see *Hartford v. Jones*, 1 *Ld. Raym.* 393.; *Baring and Others v. Day*, 8 *East*, 57., *Abb. Sh.* 556.

† 29. Salvage services were rendered by a



contract, or engagement whereby any seaman shall consent to forego any right or claim to salvage, or reward for salvage services, or such proportion of salvage as may be due to him by decree or award or otherwise, shall be valid or binding on such seaman.

111. Where the service rendered by one ship to another in a distant part of the world partakes of the true description of salvage service, the claim for salvage cannot be resisted on the ground that both ships were British. *The Portia*, 9 Jur. 167.

*See post*, No. 245.

## 2. By custom to render mutual assistance.

112. Claim of salvage for services rendered by one vessel to another (both being engaged in the Honduras trade) under an agreement to render mutual assistance, it being the usual custom of vessels in that trade so to do, pronounced against, but under the circumstances, the owner of the asserted salving ship being a bankrupt, without costs. *The Zephyr*, *Arrowsmith*, 2 Hagg. 43.

113. In a claim of salvage for services rendered by one vessel engaged in the whale fishery to another engaged in the same trade, and which was opposed partly on the ground that it was a custom in that trade to render assistance gratuitously, claim pronounced against without reference to the custom, which the Court held not to have been proved either way, but on the ground that no salvage services had been rendered. The Court will be cautious not to encourage vague pretensions in a

case of this kind. *Quære*, would proof of the custom referred to exclude a claim of salvage? *The Margaret*, *Kay*, 2 Hagg. 48, n.

114. In a cause of salvage for services rendered by one whaling vessel to another while engaged in the whale fishery in the South Seas, a custom set up in bar, as existing in the South Sea fishery, for vessels engaged therein to assist one another gratuitously in such cases, *Held* to be a legal custom, but the evidence of the fact of such custom being insufficient, an issue directed under 3 & 4 *Vict. c. 65*. to try the existence thereof, which was found for. Motion for new trial refused and cause dismissed, but without costs. *The Harriot*, *Soutrice*, 1 W. Rob. 439.

115. An asserted custom for whaling vessels to assist each other gratuitously must be founded on the principle of mutual benefit and protection of property, and on the assumption that the parties are embarked in a common enterprise, and that whatever service is mutually rendered may be mutually required. Such a custom held not to apply to a case where the salving whalers embarked some time afterwards expressly with a view to render assistance to the vessel salved and others in distress, and was not engaged in the operation of any joint enterprise with them. *The Swan*, *Dring*, *Ibid.* 70.

## 3. By agreements between the parties prior to the salvage services being rendered.\*

116. An agreement for salvage assistance can be legally made, and will be

Queen's ship, for which a bill was given by the master on the owners, who had in the meantime sold the ship, which was lost on the homeward voyage. Payment of the bill having been refused, application on behalf of the salvors for monition against the purchasers of the ship and cargo to show cause why salvage should not be paid, rejected, the Court observing that such monitions were usually decreed only in cases where the property had been allowed to go into the hands of the owners, and in lieu of the salvors attaching the property itself, and that in no case had a monition issued against the owners of property lost. *The Chieftain*, 4 Notes of Cases, 459.

\* 30. By the naval laws of Oleron, if salvage services be rendered to a ship, and a cause thereon come before any judicature, it shall be considered the pains and trouble the salvors have been at, and the reward be accordingly, without any regard to promises made them by the master or other parties concerned, in the time of their distress. *I.eg. Oleron*, *Cap. 4.*; and see same cited in *Godolph. Adm. Jur. Ext. 4.*

31. If, in the performance of a towage service pursuant to an agreement, such towing being honestly, fairly, and skilfully employed, it happen from inevitable circumstances that an accident occurs to the vessel in tow, and essential services are rendered by the vessel towing her, the agreement does not cover such services, but tends to diminish the *quantum* of reward for such extra services. A vessel having made an agreement with a steamer for towage services for 16*l.*, before the service commenced got on a sand, from which she was, after a second attempt, got off by the steamer, who then performed the towage services agreed for. The value of the property was 6250*l.*, the Court awarded 60*l.* *The William Brandt, jun.*, 2 Notes of Cases, supplement, *lxvii.*

32. If the service be rendered on a contract for a fixed price, or for a *quantum meruit*, it does not alter its nature as a salvage service, but only fixes the rule by which the Court is to be governed in awarding the compensation. *The Emulous*, 1 Sumner's (AMERICAN) Rep. 207.

binding between a master of a vessel in distress and persons affording such assistance, provided there be a clear understanding of the nature of the agreement, that it is made with fairness and impartiality to all concerned, and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves. It would be the duty of the Court of Admiralty to enforce the fulfilment of such an agreement. *The True Blue, Roberts*, 2 W. Rob. 179., 7 Jur. 756., 2 Notes of Cases, 413.; and *The Mulgrave*, therein cited.

117. It is no argument on the one side or the other against the validity of such an agreement, that much greater or fewer difficulties than were anticipated, in consequence of the change of the weather, &c., attended its performance. *Ibid.* 180.

118. A binding agreement may be constituted between the master of a steam-vessel and the master of a vessel requiring her assistance, although the one does not specifically consent to the terms proposed by the other, provided the one leads the other to receive the assistance required on the fair presumption that it is rendered on the terms of his proposal; but the proof of such an agreement lies on the party setting it up, and should be clear and satisfactory. An agreement set up in bar of a salvage claim held not sufficiently proved. *The Graces*, 8 Jur. 501., 2 W. Rob. 294.

119. The general principle with respect to agreements for salvage services is that it lies on the party setting it up to prove two things: first, that the agreement was made; and secondly, that it was just. Where there has been a definite distinct agreement, with ample time for the parties to consider what they are doing, the Court would be reluctant to interfere with it; but only under these circumstances. *The British Empire*, 6 Jur. 608.

120. Whoever takes upon himself to establish the fact that an admitted agreement has been invalidated by consent of parties, is bound to prove by clear preponderance of testimony that it was so cancelled. *The Betsy, Thompson*, 2 W. Rob. 172.

121. The Court cannot entertain the claim of the owner of a salving vessel (the master and crew of which rendered assistance to another vessel in distress, pursuant to an agreement for a given sum), for remuneration for loss on the cargo (fish) occasioned by the delay caused in fulfilling

such agreement. Such a case held to be one of contract, not of salvage, and the suit dismissed accordingly; but under the circumstances, the bargain being a hard one, without costs. *The Mulgrave, Garbutt*, 2 Hagg. 77.

122. A loose conversation between the captains of the salvor and the vessel saved, the former offering to accept, at the commencement of the service, a remuneration at the rate of two dollars a day for his men, held not to be conclusive of the merits of the case, or of the quantum of reward. *The Salacia, Garland*, 2 Hagg. 265.

123. A vessel on the West rocks, seven miles from Harwich, entered into a written agreement with the masters of two smacks for their assistance in getting her off, and into the port of Harwich, for 6*l*. The weather was moderate at the time, but became more boisterous shortly afterwards. The smacks engaged the assistance of four other smacks, and effected the service agreed on. A claim for salvage having been preferred by the smacks, on the ground that they had understood the agreement was merely for laying out an anchor, and resisted by the owners of the vessel saved, who tendered 6*l*., and averred that the engagement of the four other smacks was unnecessary, and made against the express expostulation of the master of the vessel saved, the Court dismissed the claim of the salvors, and upheld the tender, holding the agreement fully proved, that the first two smacks were bound thereby, and that the four other smacks must seek their remedy, if any, against their employers, the first two smacks; but gave no costs. *The True Blue, Roberts*, 2 W. Rob. 176., 7 Jur. 756., 2 Notes of Cases, 413.

124. An agreement having been made by the master of a steam-tug to tow a damaged vessel from the Queen's Channel up to London for 50*l*., claim of the steamer for salvage in respect of such services beyond the 50*l*. agreed upon, on the ground that the original agreement had been cancelled by consent, and that the state of circumstances was, subsequently to the agreement, so far altered as to render it no longer binding, pronounced against, and tender of 50*l*. upheld, with costs; the Court holding the asserted cancellation, the onus of proof of which lay on the salvors, not made out, and that the subsequent circumstances relied on, viz. that the weather became more boisterous, &c.,

were insufficient to shake the obligation of the agreement. *The Betsey, Thompson*, 2 W. Rob. 167.

125. Agreements for the salvage of the ship, irrespective of the cargo on board at the time, are not allowed by the Court, and where such agreements are proved, the Court will refuse to pronounce any salvage due. *The Westminster*, 1 W. Rob. 235.

126. An agreement made by the master of the salving vessel with the owner of the vessel salvaged as to the *quantum* of salvage to be paid, *held* to be binding on the master and his employers, but not upon the crew, such agreement having been made without their sanction or concurrence. *The Britain, Allison*, Ibid. 40.; *The Sarah Jane*, 2 W. Rob. 115.

127. In a suit for salvage for services rendered by one vessel to another, under an agreement of mutual assistance, a declaration of the master of the vessel salvaged, that if the salvor had not brought his action he would have done his utmost to have obtained from his owners a remuneration for his services, *Held* to amount only to a hope that the salvor would receive an honorary acknowledgment for his prompt attention. Claim of salvage pronounced against. *The Zephyr, Arrowsmith*, 2 Hagg. 47.

*See post, No. 251.*

#### 4. By quitting vessels salvaged after the completion of their services.

128. Salvors' title to remuneration is not impaired or in any way affected by their quitting possession of the vessel salvaged. *The Eleanora Charlotta*, 1 Hagg. 156., 1 Park on Ins. 301.

*See ante, Nos. 105. to 109.*

#### 5. By misconduct of salvors.\*

129. A salvage claim in part sustained and in part dismissed, upon the ground that the salvors had misconducted themselves in the latter stages of the alleged service, by continuing to obtrude their services after they had been formally discharged by the owners. Full costs not allowed, but a sum *nomine expensarum* only given in consideration of the salvors' misconduct. *The Glasgow Packet, Nicoll*, 2 W. Rob. 306., 8 Jur. 675., 3 Notes of Cases, 107.

130. Where essential service has been rendered the amount of compensation for that service may not only be diminished by reason of the subsequent negligence or misconduct of the salvors, but all reward may be forfeited. *The Dossetei*, 10 Jur. 865.; *The Duke of Manchester*, Ibid. 863., 4 Notes of Cases, 580., and see the cases there cited.

131. A ship in great distress was taken by the salvors to, and anchored in, a place of comparative safety. She might have been placed in perfect safety, if the salvors had then availed themselves of further assistance, which was offered, but, instead of so doing, they left her at anchor for six hours, while they proceeded for ropes and spars to their own port. *Held*, that by neglecting to avail themselves of such assistance, the salvors had not conducted themselves with due regard to the lives and property on board the ship, and that the amount of salvage remuneration must be diminished by such misconduct. On a value of 10,000*l.* 50*l.* awarded as salvage, with costs of salvors. *The Dossetei*, 10 Jur. 865.

132. A ship in charge of a licensed pilot got upon the Goodwin Sands. She was

\* 33. The Court will look with considerable indulgence on the efforts of persons offering their services to vessels in distress where there are no other individuals on the spot capable of rendering more efficient assistance, but different considerations apply to the conduct of individuals assuming the character of salvors when there are other persons at hand more competent to discharge those duties. Claims of certain fishermen for salvage in respect of services rendered by them to a foreign vessel on the Norfolk coast, when there were regular pilots at hand to have taken charge of her, pronounced against, the Court and Trinity Masters being of opinion that the proceedings of the salvors had been erroneous and injudicious, and of no benefit to the vessel. Under the circumstances, however, the Court declined to give costs against the salvors. *The Dydden*, 1 Notes of Cases, 115.

34. Embezzlement of the property saved works a forfeiture of the right to salvage. *The Dove and cargo*, 1 Gallison's (AMERICAN) Rep. 585.; *Mason v. The ship Blaireau*, 2 Cranch's (AMERICAN) Rep. 240.

35. Embezzlement works a forfeiture of all claim to salvage, whether it takes place before the property is brought in or after it is in the custody of the officers of the Court. Salvors are responsible *civilliter* for their conduct in relation to the salvage property, so long as it is subject to the decree of the Court. *The Boston and cargo*, 1 Sumner's (AMERICAN) Rep. 328.

36. Spoliation, smuggling, and other gross misconduct of the salvors, may forfeit all claim to salvage. *The Bello Currunces*, 6 Wheaton's (AMERICAN) Rep. 152.

assisted off by a steamer, taken in tow, and then got upon Sandwich flats. *Held*, that the steamer was not relieved from the responsibility of watching the course of the ship because the latter had a licensed pilot on board, and that as the ship's getting on Sandwich flats might have been prevented by ordinary care and skill, and culpable negligence was therefore imputable to the steamer, her claim to salvage compensation was forfeited by such misconduct, and suit dismissed accordingly, with costs. *The Duke of Manchester*, *Ibid.* 863., 4 Notes of Cases, 575.

133. A joint action of two sets of salvors, *viz.* the crew of the smack A., the primary salvors, and the crew of six other smacks, for salvage in respect of services rendered to a foreign ship in getting her off the Long Sand, dismissed on the ground that the primary salvors, who had boarded the vessel prior to her striking on the sand, had acted erroneously, and had, by the means they adopted, caused the vessel to get on the sand. On a subsequent application to the Court on behalf of the other salvors, whose services had been rendered after the vessel had got on the sand, and who had not, in such services, recognised the prior acts of the primary salvors, 200*l.* awarded to them, with costs, on a value of 7500*l.* Had the claims of the second salvors been founded in any degree on the original error of the first salvors, no services which they might have rendered afterwards, however meritorious, would have entitled them to derive a benefit from the error and misconduct of the first salvors. *The Neptune*, *Friecker*, 1 W. Rob. 297.

*See ante*, No. 66. and *post*, Nos. 137, 138. 194. 262. 276. 298. to 300.

#### 6. By fraud in the salvors' case.

134. A fraudulent salvage claim dismissed with costs. *The Susannah*, *Brown*, 3 Hagg. 345. n.

135. The fact of the master and the whole of the crew of the vessel saved making affidavits in support of the salvors is a circumstance engendering great suspicion, which is enhanced by the affidavits being couched in terms exceeding the statements in the act on petition, and in language quite inconsistent with the occupations and station in life of the deponents, and by glaring contradictions and exaggerations in the evidence of the

salvors. In a case of salvage, supported by evidence of such a character and averring the great danger of the vessel saved, the imminent peril to the salvors in effecting her rescue, &c., the Court *held* the case to be supported by a concoction of evidence so strong, that the very strength of it destroyed its credibility, and that the salvage services were of an ordinary character only, and awarded on a value of 400*l.*, the sum of 24*l.* being the amount tendered. Salvors allowed their costs up to the time of the tender, but condemned in the subsequent costs. *The Towan*, 8 Jur. 221., 2 W. Rob. 259.

#### 7. By lapse of time.

136. A claim for salvage preferred by a King's ship, after a delay of eight months, not *in rem*, but by monitions against owners and consignees, dismissed, the salvors being *held* (the salvage being very slight) to be barred by lapse of time. *The Rapid*, *Cochrane*, 3 Hagg. 419.; but see *The John*, *Brotherick*, 8 Jur. 276.

*See post*, No. 351.

### X. OF THE RIGHTS OF OWNERS OF PROPERTY SALVED AS AGAINST SALVORS.

#### 1. To determine the extent and duration of salvors' services.

137. The master, so long as he retains the command, is fully entitled to regulate the *quantum* of assistance to be given to his vessel, and he may be extremely blameable if he do not avail himself of all that is at hand and that he may consider necessary. Prior salvors have no right to interfere with the master in attempting to exclude further assistance, and such misconduct diminishes their title to salvage. *The Dantzic Packet*, *Tanner*, 3 Hagg. 383.

138. The owners, when present, are the only proper judges of the necessity for the continuance of salvors' services. Salvors having obtruded their services after notice for their discontinuance, compensation refused on account of such services, but salvage awarded for the services antecedently rendered, with a sum *nomine expensarum*. *The Glasgow Packet*, *Nicoll*, 8 Jur. 675., 2 W. Rob. 306.

139. The lord of a manor is not entitled to salvage for taking, against the consent of the owner, and preserving parts of a ship thrown on his manor, when the servants of

the owner are there to take care of it for him. *Sutton v. Buck*, 2 Taunt. 302.

2. *To obtain release and delivery to them of property salvaged.*

140. By 9 & 10 Vict. c. 99. s. 27. when any sum shall be paid for salvage, either voluntarily or in consequence of any award made or security given for the payment thereof, as therein aforesaid, and it shall appear that the ship, goods, or article salvaged are detained in the custody of any officer of Customs or of the High Court of Admiralty, such officer or Court, as the case may be, shall not permit such ship to depart or give up such goods or article, until the production of a writing signed by some or one of the salvors, and containing a description of the ship, goods, or article, and an account of the sums paid or security given, and such officer or Court shall send a copy of such writing to the nearest receiver, who shall transmit the same, or a copy thereof, to the Receiver General.

141. By 9 & 10 Vict. c. 99. s. 9. if the rightful owner of wreck, goods jetsam, flotsam, lagan, or derelict, &c., reported or seized under this act, shall, within twelve months therefrom, make out his claim thereto, to the satisfaction of the receiver, the same shall be restored to him on payment of the duties and necessary charges attending the care or removal thereof, a reasonable compensation for salvage, and five per cent. on the value of the article; but such per centage is in no case, whatever the value of the property, to exceed 50*l*. And by s. 10. if the receiver shall pronounce against the claim of any person as owner, he shall, at his request, signify such determination in writing, with the date thereof, and the reasons for the same.

*See PRACTICE, cap. IX.*

3. *Salvors' claims against — when terminated.*

142. By 9 & 10 Vict. c. 99. s. 26. whenever it shall appear that any sum awarded or agreed to be paid for salvage services shall have been duly paid to the appointee of the Justices, Commissioners, or arbitrators making the award, or under any agreement, or, in default thereof, to the master

or owner of the salving ship or boat, or the nominee of the salvors; any claimant of any share in such sum thinking himself aggrieved by the insufficiency of the share allotted to him, or otherwise, shall be precluded from enforcing such claim against the ship or goods salvaged, or the owner thereof.

143. Before the stat. 9 & 10 Vict. c. 99. it was held that owners of vessels which had received salvage assistance could not safely enter into a settlement of a salvage compensation which included the interests of all persons concerned in the salvage, without procuring a general release from all parties interested. A sum of 800*l*. having, pursuant to agreement, been paid as salvage by the owners of the vessel salvaged to the master of the salving vessel, who was a part-owner, in the presence of the owners and mate, and a receipt been given by him on behalf of himself, the owners, mate, and crew, some of the crew, who were dissatisfied with the distribution, commenced proceedings against the vessel salvaged, not as disputing the amount of salvage, but to enforce a different distribution thereof, *Held* that such a mode of proceeding was no objection to the suit, and that the parties were not estopped from such proceedings by the receipt so given, nor by applications made by some of them to the owners of the salving vessel for their share of the salvage; but the mate who signed the before-mentioned receipt along with the master, and afterwards received of him and gave him a receipt for a sum mentioned to be his share of the salvage, though, as averred, under a misapprehension that the salvage had been legally settled, and that he was bound to whatever had been done, *Held* to have thereby barred himself from so proceeding. *The Sarah Jane*, 2 W. Rob. 110.

XI. GENERAL CONSIDERATIONS AS TO THE ALLOTMENT OF — \*

144. In salvage cases the exact service performed is not the only proper test for estimating the *quantum* of reward. It is for the general security and interest of navigation and commerce that a considerable reward should be held up to encour-

\* 37. Unless the property be saved in fact by those who claim as salvors, salvage will not be allowed, be their intentions however good, and

their exertions however heroic and perilous. *Clarke v. The brig Dodge, Healy*, 4 Washington's (AMERICAN) Rep. 651.

rage salvors to go out to the assistance of vessels in distress. *The Sarah*, 1 C. Rob. 313. n.

145. The principles on which the Court proceeds lead to a liberal remuneration in salvage cases, for they are not confined merely to the exact *quantum* of service performed in the case itself, but the general interests of navigation and commerce, the fatigue and anxiety, the determination to encounter danger, the spirit of adventure, and the skill and dexterity which are required by the exercise of that spirit, are all to be taken into consideration. *The William Beckford, Muirhead*, 3 C. Rob. 355.

146. In questions of salvage the Court must not act on the same liberality of principle that belongs to prize cases. *The Vine, Jay*, 2 Hagg. 2.

147. Salvage is not merely a payment for work and labour. The general interests of commerce and navigation, in encouraging exertion, risk and peril in the relief of property in danger, are to be adverted to. On the other hand the Court must guard against exorbitant demands and an undue advantage being taken of distress. But when salvors act honestly and fairly they are to be liberally rewarded, without a minute inquiry into the *quantum* of labour. *The Hector, Freeman*, 3 Hagg. 95.

148. The amount of remuneration for salvage must depend on all the circumstances of the case. The state of the weather, the degree of damage and danger to the ship and cargo, the risk and peril incurred by the salvors, the time employed, the value of the property; and, when these are considered, there is still another principle — to encourage enterprise, reward exertion, and to be liberal in all that is due to the general interests of commerce, and the general benefit of owners and underwriters, even though the reward may fall upon an individual owner with some severity. *The Industry, Davis*, *Ibid.* 204.

149. The principle upon which alone a salvage service can be founded is the rescuing a ship and cargo from some impending danger or distress. *The Mary, Blossie*, 1 W. Rob. 457.

150. The foundation of the authority

and jurisdiction of the Court of Admiralty is a service actually rendered. No salvage, therefore, can be awarded where no service has been performed; yet circumstances may justify the Court in directing the expenses of parties attempting to render a service, to be paid by the ship which had been in danger. Where, therefore, a vessel, having got into a situation of danger, extricated herself therefrom before the arrival of salvors, who proceeded to her assistance at considerable risk, claim for salvage refused, but costs of salvors under such circumstances allowed. *The Ranger*, 9 Jur. 119.

151. An agreement out of Court between salvors and owners of the ship saved affords no certain criterion by which the Court can award remuneration between the salvors and the owners of the cargo. *The Emma*, 8 Jur. 651.

152. The Court, in considering the value of a salvage service, regards not merely the actual state of things, but what they might probably have been at a particular time of year and in a certain state of weather. *The Monkwearmouth*, 9 Jur. 72.

153. In salvage cases the Court will take into consideration, in connection with salvage services at sea, those afterwards performed on land relating thereto, in determining the reward due. *The Mary Ann, Ferrier*, 1 Hagg. 160, 161.

154. The Court of Admiralty cannot, in a salvage suit, allow charges for repairs of vessel saved, though asserted to be so mixed up with the salvage as to be inseparable. *The Rainger, Laing*, 2 Hagg. 42.

155. A salvor of wreck is not entitled to remuneration for services other than those of a salvage nature, out of proceeds of cargo sold duty free, pursuant to 1 & 2 Geo. 4. c. 75. Objection to the report of the registrar and merchants, rejecting such further claims, overruled. *The Jonge Nicolaas, Parma*, 1 Hagg. 209, 210.  
*See post, Note 66.*

## XII. OF THE INGREDIENTS OF SALVAGE SERVICES.\*

### 1. Generally.

156. Salvage is not always a mere

\* 38. In fixing the rate of salvage, the Court of Admiralty usually has regard not only to the labour and peril incurred by the salvors, but also to the situation in which they may happen to stand with respect to the property saved, to the prompti-

tude and alacrity manifested by them, and to the value of the ship and cargo, as well as to the degree of danger from which they were rescued. *1 Park on Ins.* 304.

compensation for work and labour: it is to be estimated on a more enlarged and liberal scale. The ingredients of a salvage service are, first, enterprise in the salvors, in rendering assistance in tempestuous weather, and at a risk of life; secondly, the degree of danger and distress from which the property is rescued; thirdly, the degree of labour and skill displayed by salvors and the time they are occupied; fourthly, value of the property saved. Where all these occur, a large reward ought to be given; but where none such, or scarcely any, take place, the compensation can hardly be denominated a salvage reward; it is little more than a mere remuneration *pro opere et labore*. *The Clifton, Light-body*, 3 Hagg. 120.

157. In the consideration of salvage cases the primary object is the danger of the property saved, its value, and the assistance actually received; the secondary object, the risk to salvors and their property, the skill, time employed, and other collateral circumstances. *The Travellers, McClear*, *Ibid.* 371.

158. In a salvage service the primary ingredients and objects are the lives and property in jeopardy; but the risk of those employed, and the length of time, are also to be considered. *The London Merchant, Laker*, *Ibid.* 394.

159. Promptitude in rendering assistance is a principal ingredient in salvage services. *The City of Edinburgh, Fraser*, 2 Hagg. 334.\*

*See post*, No. 252.

## 2. Skill and knowledge of salvors.

160. Success is the main ground on which a salvage reward is given, and that reward always bears a proportion to the skill and knowledge required and shown, the degree of skill and knowledge expected being according to the station in life of the salvors. *The Lockwoods*, 9 Jur. 1017.

161. Where, therefore, the orders given by a lieutenant in the navy in command of a revenue cutter, in rendering assistance to a vessel in distress, were held to be without a knowledge of the danger, or without duly weighing the consequences of such orders, and the measures adopted were unsuccessful and injurious, the Court pronounced against the claim of salvage, not-

withstanding a certificate by the master of the vessel saved admitting a benefit from the services of the salvors. *Ibid.*

162. The same skill that would be required from duly-licensed Trinity pilots is not to be expected from salvors assuming the management of vessels in cases of difficulty; but to entitle such salvors to a salvage award in the Court of Admiralty, they must show that they possessed skill commensurate with their vocation and condition in life, and adequate to the duties they undertook to perform. *The Neptune, Friecker*, 1 W. Rob. 300.

163. Ordinary labour, as applied to questions of salvage, means that labour which may be performed by an individual not possessed of nautical skill, but of mere strength of arm and limb. The value of such labour, when united with nautical skill, must be estimated by a somewhat higher consideration than mere ordinary labour. *The Duke of Clarence, College*, 1 W. Rob. 346.

*See ante*, Note 33.

## 3. Risk and loss of life.

164. What enhances the pretensions of salvors most is the actual danger they have incurred. The value of human life is that which is and ought to be principally considered in the preservation of other men's property; and if this be shown to have been hazarded, it is most highly estimated. *The William Beckford, Muirhead*, 3 C. Rob. 356.

165. Whenever there is risk of life the Court always gives a larger rate of salvage remuneration. *The Ebenezer*, 8 Jur. 386.

166. Where danger to life has been incurred by the salvors, and afterwards successful service rendered, the danger to and actual loss of life is a circumstance always tending to enhance the value of the reward. *The William Hannington*, 9 Jur. 631.

*See post*, Nos. 179. to 182.

## 4. Value of the property saved.

167. In salvage cases the Court gives a smaller proportion where the property is large, a larger where it is small, and a moderate proportion where it is of vast extent. *The Blendenhall, Barr*, 1 Dodson, 423.; *The Waterloo, Birch*, 2 Dodson, 442.

\* 39. *Seemle*, that alacrity in rendering assistance is an important ingredient in determining a

salvage award. *The Spheroid* (1838), 2 Monthly Law Mag. (Notes of Cases), 285.

168. Though the actual service performed is not to be measured by the value of the property, yet the value is not to be left out of consideration. It affords the Court (where the property is large) an opportunity of doing what it cannot in many cases—giving an adequate remuneration. *The Raihes, Gardiner*, 1 Hagg. 246.

169. The value of the property saved is always an ingredient in the consideration of the amount of salvage. It is a ruling principle in such cases, that the remuneration is always larger when the property is large, and *vice versa*. *The Hector, Freeman*, 3 Hagg. 93.

170. In salvage cases, the value of the property saved is certainly not an immaterial circumstance, for in proportion to that value is the benefit to the owners, and that is one of the primary principles in settling the amount of remuneration. *The Ewell Grove, Burton*, 3 Hagg. 221.

#### 5. Ignorance of the locality by vessels saved.\*

171. A claim of salvage cannot be engrafted on the local ignorance of a master of a foreign vessel. *The Vrouw Margaretha, Jacobs*, 4 C. Rob. 104.

172. Ignorance of the locality, though in the case of a foreign master, is, under certain circumstances, no defence against a claim for salvage, but the reverse. *The Cumberland*, 9 Jur. 191.; and *The Eugenie*, note thereto, 192.

173. In a claim of salvage for approaching a foreign vessel in impending danger, a strong case must be shown that the danger was impending, and that if not warned, the vessel would have incurred it, to establish such a claim. *The Giacomo Tarabochia*, 3 Hagg. 345.

174. Claim for salvage against a foreign vessel for rescuing her from impending danger dismissed, with costs, no necessity for any interference being shown, and the salvors disclosing a false case. *Ibid.* 344.

175. Claim for salvage against a foreign vessel in proximate danger dismissed, the

assistance having been unnecessary and refused. Salvors condemned in *5l. nomine expensarum*, the Court holding that the claimants acted *bond fide*. *The Henrietta, Dormanski*, *Ibid.* n.

*See ante*, No. 59.

### XIII. AWARDS OF, AND THE PRINCIPLES OF SUCH REMUNERATION.<sup>1</sup>

#### 1. With regard to the allotment of a specific proportion of property saved.

176. In allotting a salvage reward, the Court always endeavours to combine the consideration of what is due to the owners in the protection of property with the liberality due to salvors in remunerating meritorious services. All claims of specific proportions, and particularly the distinction of derelict, have been discountenanced in modern practice. The practice of the last century in salvage cases is thus described by Sir Edward Simpson:—"The maritime laws of England fix no certain proportion in cases of salvage, but are governed by circumstances of danger, hazard, trouble, and expense of saving. An eighth or tenth, except in cases of extreme hazard, is as much as is usually allowed. In some cases of extreme hazard one third, one fourth, one sixth, or one ninth, or a sum of money only on account of salvage, is given." *The Thetis*, 3 Hagg. 62.

177. The rates of simple proportion of salvage graduate at large intervals. The estimate of salvage services, labour, and enterprise, requires to be made as minutely as possible, under an infinite variety of particulars, and may therefore be better done by the allowance of precise sums. *The Oscar, Lofgren*, 2 Hagg. 260.

178. The Court, in the allotment of salvage, will not recognise the rule of proportion of value of the property saved, but will determine the amount of salvage with reference to the circumstances of each particular case. *The Salacia, Garland*, 2 Hagg. 263, 264.

\* 40. The ignorance of a foreign master, where nothing is required but the simple assistance of a pilot, would not tend to augment the rate of salvage, nor would the ignorance of an English master, because it is the business of a pilot to supply any deficiency of the master's knowledge. Ignorance of the locality, however, under other circumstances, is not an unimportant matter for

consideration, because when the question is what would be the probable fate of a vessel if compelled to keep at sea, the master being in entire ignorance of the dangers with which she was beset, then undoubtedly the ignorance of the persons on board adds to all the ordinary and natural perils in which the vessel would be placed. *The Eugenie*, 3 Notes of Cases, 430.



2. *For preservation of life, and how affected thereby.*

179. By 9 & 10 *Vict. c. 99. s. 19.* every person acting or being employed in the preservation of the life of any person on board any ship or vessel in distress shall be entitled to salvage.

180. Prior to the stat. 9 & 10 *Vict. c. 99.* the Court of Admiralty had no power of remunerating the mere preservation of life; but if it could be connected with the preservation of property, whether by accident or not, the Court could and would take notice of it, and join that to the *animus* in the first instance. *The Aid, Teasdel*, 1 Hagg. 84.

181. Prior to the stat. 9 & 10 *Vict. c. 99.* the Court of Admiralty had no authority to allot a salvage reward, on the ground alone that the lives of persons on board a vessel in distress have been preserved by the successful exertions of the parties suing; and a claim of asserted salvors for preservation of life alone pronounced against accordingly, but without costs. *The Zephyrus, Blake*, 1 W. Rob. 329. 331, 332.

182. In a case of salvage of a derelict sold at 250*l.* 30*l.* awarded to a smack under 1 & 2 *Geo. 4. c. 75.*, for her assistance in preserving the lives of the crew, she having put them on shore from the derelict, but not having been concerned in the salvage of the vessel. *The Queen Mab, Tallman*, 3 Hagg. 242.

*See ante*, Nos. 164. to 166.  
*and post*, Nos. 267. 269.

3. *As to distinctions between services to the ship and to the cargo.*

183. In cases of salvage the Court will not entertain the distinction between the services rendered to the ship and to the cargo, for the purpose of assessing the salvage remuneration on a different scale as to the one or the other, nor the distinction as to the particular quality of the cargo, as more or less liable to or affected by injury. The only case in which such latter distinction has been allowed has been as between silver or bullion and articles of mere merchandise. *The Emma*, 8 Jur. 651.

184. A different rate of salvage for the ship and different parts of the cargo held to be unusual, inconvenient, and leading to error. So also as to an apportionment with reference to the difference of danger to which portions of the property were exposed. On appeal from award of magistrates on that and other grounds, the Court

refused (the other grounds being held insufficient) to disturb the award, on the ground of variation in apportionment; but declined in consequence thereof to condemn the appellants in costs. *The Vesta, Thompson*, 2 Hagg. 189.

*See ante*, No. 125.

4. *In cases of extraordinary merit.*

185. In a case of a vessel in distress, the crew of which, on the arrival of the salvors, deserted her, and came on board the salvors' vessel, the salvage being one of very considerable merit, 800*l.* awarded as salvage, the value of the property saved being 1900*l.* *The Baltimore, Baker*, 2 Dodson, 136.

186. In a case of salvage of property of considerable value by four boats and twenty-two salvors, one tenth of the value and salvors' expenses decreed, the salvage being very meritorious, and accompanied with the preservation of life. *The Aid, Teasdel*, 1 Hagg. 84.

187. In a case of salvage of great merit, in which 600*l.*, a fourth of the value of the vessel saved, had been awarded on arbitration, leaving the salvage on the cargo to be decided by the Court of Admiralty, the cargo being valued at 38,000*l.*, the Court allotted 1000*l.*, pursuant to the report of the registrar and merchants, for losses of salvors in losing the seal fishing season, &c., in consequence of such services, and 1500*l.* as a salvage remuneration, with costs; 200*l.* thereof decreed to the master of the salvor for his particular expenses. *The Salacia, Garland*, 2 Hagg. 270.

188. In a claim for salvage preferred by the owners, master, and crew of a South Sea whaler against a homeward bound West Indiaman, value 7000*l.*, and for which services 500*l.* had been tendered, the Court considering the services very meritorious, allotted 1200*l.* *The Jane, Hudson*, Ibid. 338.

189. In a very meritorious salvage, attended with great danger and loss of three lives, effected by eight smacks, manned with thirty-two men, the value of the ship being 1500*l.*, and of the cargo, consisting of government stores, nearly 5000*l.*, a tender by the owners of the ship of 400*l.* for salvage of ship and freight pronounced for, and 900*l.* additional awarded as salvage on the stores, together 1300*l.*, about one fifth of the whole value. The Court intimated that had the vessel been a derelict, two fifths would have been the least reward. Costs of salvors decreed to be paid *pro rata*

between ship and cargo. *The Marquis of Huntly, Molisson*, 3 Hagg. 246.

190. In a salvage of a very meritorious character, effecting a complete rescue from total loss, the lives of the crew of the vessel salvaged having been in imminent peril, great perseverance and skill having been exercised by the salvors, the salvage having lasted five days, and the salvaging vessel having been in great peril and much strained, a tender of 400*l.* was made, the value of the vessel salvaged being 4600*l.* The Court awarded 1000*l.* with costs to the salvors, the owners and crew of a smack, intimating that if it had been a derelict one third at least would have been given; an additional sum of 100*l.* awarded, with costs, to another smack, who went to assist, showed a willingness, but was of little substantial service, owing to her bad sailing. *The Albion, Turnbull*, *Ibid.* 255.

191. In a case of salvage effected by several luggers and their crews by very meritorious exertions and skill, to a vessel in extreme danger and during a very violent hurricane, the salvors being numerous and the property salvaged of the value of 10,500*l.*, the Court awarded 2000*l.* and expenses, being one fifth, observing that the underwriters would not have underwritten the vessel for 50*l.* per cent. in the state the ship was in. *The Branken Moor, Richards*, *Ibid.* 373.

192. A fishing lugger of forty-four tons, manned with a crew of ten hands, went to the assistance of a vessel in distress, which had struck on the Harbrough Sand in a gale of wind, and after having been occupied two days in the service, eventually succeeded in getting her off the sands and carrying her into Yarmouth. The ship, cargo, and freight, were valued at 3637*l.* The Court awarded 400*l.* as salvage. *The Medora*, 2 W. Rob. 69.

See post, Nos. 219, 220.

226, 227, 229, 233, 234, 241.

249, 295., and note 50.

##### 5. In cases of ordinary merit.

###### (a) Where the property was of large value.\*

193. In a case of salvage of a ship and cargo (valued at 17,600*l.*), which had struck on a sand and was in a situation of great danger, the salvors not being exposed to any great peril, but being nu-

merous and engaged in the service during three days, 1000*l.* awarded to the salvors, and the further sums of 50*l.* to the owners of the salvaging vessels, 20*l.* to two boys, and 15*l.* to each of the masters of the salvaging vessels. *The William Beckford, Muirhead*, 3 C. Rob. 355. Decision affirmed on appeal, but without costs, *Ibid.* 357.

194. A question of salvage remuneration for services rendered to a foreign ship-of-war, having been referred by the government to which the vessel belonged to the award of Sir W. Scott, then judge of the High Court of Admiralty, Sir W. Scott was of opinion that essential service had been rendered, but that there had been errors of conduct on both sides, tending to reduce the value of the property. The property salvaged being about 32,000*l.*, Sir W. Scott awarded 800*l.* to the salvors and their expenses. *The Prins Frederick, Van Senden, Commander*, 2 Dodson, 482.

195. In a case of salvage in which the value of the property salvaged amounted to 53,000*l.*, the Court awarded to the salvors 1600*l.*, viz. 1000*l.* to the commander, officers, and crew of her Majesty's ship Dryad, and 600*l.* to the smack Patriot. In another case of large value the property salvaged amounting to 30,000*l.*, the Court awarded to the salvors (two pilot boats), 1250*l.*, reversing an award of 400*l.* *The Porcher, Faulkner, and Balsemao, Alvez*, 2 Hagg. 270. n.

196. In a case of salvage to a large steamer, value 12,000*l.*, having passengers on board, and which, having struck on a reef of rocks, was, by the exertion of a steam-tug and an officer of the coast guard and five of his men (assisted by 150 boatmen paid by agreement), got off the reef and towed into port by the steam-tug, a distance of two miles, 400*l.* awarded to the steam-tug, and 100*l.* to the officer and his men, the officer having superintended and countenanced the proceedings, with costs of salvors. On appeal, decision affirmed with costs, except as to 5*l.* to each of the officer's men, who rendered no actual assistance, being only stationed by him on the shore to protect the cargo, if landed, which it was not. *The London Merchant, Laher*, 3 Hagg. 394.

197. A vessel suddenly dismasted was, while at anchor and under jury rigging, taken in tow by a valuable steamer (en-

\* 41. In a suit for salvage in respect of services rendered by two vessels in getting a third vessel off some rocks near one of the Cape de Verd Islands and into deep water, the Court, on a value of

14,000*l.*, awarded 700*l.* as salvage and 60*l.* for demurrage to one of the salvaging vessels, the other having accepted a tender of the owners. *The Haidee*, 1 Notes of Cases, 602.

gaged for the purpose) for nine hours; upon the facts, the Trinity Masters being of opinion that nautically the service was merely towage, without risk on either side, the Court on a value of 21,000*l.* awarded 600*l.* and costs. *The Isabella, Monro*, 3 Hagg. 427.

198. In a claim of salvage preferred by a steam-vessel of thirty-five horse power, and having a crew of eight men, for dragging a vessel, value 11,700*l.*, off a sand, on the Essex coast, and towing her to London, tender of 200*l.* upheld without costs. *The Emu, Nelson*, 1 W. Rob. 15.

199. A barque of 354 tons having struck on the Tongue Sand, and afterwards on the shingles off Margate, two luggers of the joint burden of forty-nine tons went to her assistance, and on the following morning, having brought out an anchor and cable, succeeded in conducting her in safety to the North Foreland. The value of the ship, cargo, and freight, was 12,000*l.*, and 120*l.* was tendered for the salvage. The Court awarded 250*l.* *The Mountaineer, Heaton*, 2 W. Rob. 7.

See *ante*, No. 194., *post*, Nos. 223. 242. 252. 283., note 62.

(b) *Where the property was of moderate value.*

200. A pilot and six men having gone at the risk of their lives out of Portsmouth Harbour, and before the storm had abated, to a vessel in distress, dismasted, without anchors, and bumping on the shore, piloted her into Portsmouth Harbour, the services not being (after reaching the vessel) of great difficulty or long duration, the Court awarded, with costs, 80 guineas as salvage on a value of 3000*l.*; and held a tender of twenty guineas to be an inadequate remuneration. The amount of salvage was apportioned as follows: twenty guineas to the pilot and ten guineas to each of the boatmen. *The Nicolaas, Witzén*, 3 Hagg. 369.

201. Salvage services having been rendered by the crew of a pilot smack to a vessel in imminent danger, 50*l.* in addition to a tender of 100*l.* allotted, with costs. *The Frederick, Thurman*, 1 W. Rob. 16.

202. In a case of salvage rendered by twenty-two salvors to a vessel driven on shore off Margate during a heavy gale of wind, the value of the ship being 500*l.*, and a tender of 60*l.* having been made and accepted as to the ship, the Court awarded 320*l.* in respect of the cargo, valued at 3000*l.*, overruling a tender of 250*l.* *The Emma*, 8 Jur. 651.

203. An East Indiaman with troops on board, and a cargo of coals and iron, struck successively on three different sounds near Margate. Eight luggers and a smack with ninety-five men on board went to her assistance. She was in a state of considerable danger, had six feet water in her hold, and had lost her rudder. The salvors took measures for keeping her dry and bringing her into a state of safety, anchors were carried out, fifty extra men engaged at the pumps, the troops (120 men) with their wives and children were shipped in four of the luggers and carried to Sheerness, the luggers afterwards returning to the vessel. The next morning the vessel was taken in tow by a steamer employed by the salvors for that purpose, who accompanied her to see that she took a correct course, avoiding the dangers of the numerous adjacent sands, and on the following morning she arrived in the West India Docks. The value of ship, cargo, and freight, was 6000*l.*; 120*l.* was paid to the salvors for landing the troops, and 50*l.* for the hire of the steamer; a tender of 475*l.* for their other services overruled, and 650*l.* awarded, exclusive of the sums paid. *The Diamond*, 9 Jur. 695.

6. *In cases of trivial merit.\**

204. A foreign vessel ran on a sand on the Essex coast, and was afterwards brought off on the flowing of the tide by the assist-

\* 42. A vessel having got on shore on the Gore sand in the Bristol Channel, a steam-tug proceeded to the spot, and the ship's jolly-boat having been put out with a rope, the tug was by such means connected with the ship, and in about a quarter of an hour drew her off. The vessel had lost her rudder, and had between four and five feet water in her hold. The value of the ship, cargo, and freight, was 9000*l.* A tender of 50*l.* had been made. The Court considered that although the service rendered involved no risk and was of short duration, the vessel had been rescued from a state

of danger, and awarded 150*l.* *The Kara*, Nov. 12. 1841, cited in 1 Park on Ins. 307.

43. The *Harvey* having encountered severe weather and sprung her bowsprit and foremast, after having been thirteen days in a leaky state ran into the Bristol Channel, where she was fallen in with off the Flat Holm, twenty miles from Bristol, by a steam-tug, which found the crew much exhausted with labour at the pumps, there being seven and a half feet water in her hold. The steam-tug remained by her during the night and towed her into Bristol on the following day, when

ance of some fishermen going out to their relief and taken on board. The degree of salvage merit being slight, 50*l.* awarded to the salvors, with costs. *The Vrouw Margaretha, Jacobs*, 4 C. Rob. 103.

205. A lugger with a crew of five men was engaged by a vessel off Dungeness to bring out an anchor (which her pilot swore to be necessary) from Dover, to her in the Small Downs. The vessel did not proceed to the Small Downs as she had arranged to do, but the lugger procured the anchor, having shipped a heavy sea in quitting the harbour, and after cruising about the Small Downs all night in search, the weather being dark and squally, on the following morning discovered the vessel and took on board the anchor. For this service, the value of the vessel and cargo being 16,500*l.*, 60*l.* was awarded by magistrates, under 1 & 2 Geo. 4. c. 75. The owners did not appeal, but refused to pay, and tendered 35*l.* 10*s.* in lieu thereof. On an original proceeding for salvage in the Admiralty Court, 60*l.* awarded, with costs of salvors. *The Heaton, Freeman*, 3 Hagg. 90.

206. In a claim for salvage preferred by a lieutenant and four men of the coast guard, the services being of a very ordinary character, tender of 50*l.* upheld, and salvors condemned in 50*l.* *nomine expensarum*. *The Clifton, Lightbody*, Ibid. 117.

207. A revenue cutter's crew, who assisted other salvors to the extent of putting on board the derelict, at the pilot's suggestion, a cable and anchor, which, however, were not used, and were taken back by them next day, awarded 5*l.*, the Court holding that it is always desirable to encourage due assistance. *The Queen Mab, Tallman*, Ibid. 243.

208. A vessel on shore on a dangerous part of the coast, and in some danger, was approached with some risk by salvors, who succeeded in getting her off the rocks, but were unable to render further assistance until she drifted to a place out of danger, from which she was ultimately carried into harbour. The number of salvors was eighteen, and the service lasted about sixteen hours. On a value of 850*l.*, 60*l.* awarded as salvage and tender of 40*l.* overruled. *The Ebenezer*, 8 Jur. 385.

209. In a case of salvage in respect of services rendered by one British ship to another in a distant part of the world, the services being of no great merit, nor attended with any risk to the salvors, and the vessel salvaged being in no great danger, a tender of 50*l.* upheld. *The Portia*, 9 Jur. 167.

210. The master and crew of a fishing smack held entitled to salvage for having boarded with some risk and peril a vessel in danger and distress, and conveyed a message to a steamer to go out of port to her assistance, and the master of the smack having returned with the steamer and accompanied the vessel to London. A tender of 10*l.* for such services overruled, and 40*l.* awarded. *The Ocean, Martin*, 2 W. Rob. 91.

See *antè*, Nos. 56, 57, 98.,  
note 31., Nos. 190, 196., and  
post, Nos. 239, 277. to 282.  
284, 290.

#### 7. In cases of derelict vessels.\*

(See DERELICTS.)

#### (a) Proportions of value usually awarded.†

211. There is no fixed amount of salvage

the water was found to have increased to ten feet. The value of the vessel and cargo was 3002*l.*; the owners considering it a case of towage only tendered 25*l.*, double the amount of ordinary towage; the Court, taking into consideration the state of the vessel, declared that it could not assimilate it to a common case of towage, and awarded 50*l.* with costs. *The Harvey* (1839), 4 Monthly Law Mag. (Notes of Cases), 153.

44. A French brig, bound to St. Petersburg, being in the Bristol Channel, the master having lost his course and being ignorant of the locality, was at the entrance of Carmarthen Bay approached by a fishing boat, from which a man was put on board, under whose directions the brig was navigated to Tenby Roads. The value of ship and cargo was 3000*l.*, and a tender of 5*l.* was made by the owners; the Court, taking into consideration the master's ignorance of the locality, that the sails were out of repair, that the vessel was therefore not altogether free from danger, that the persons boarding her were not pilots, and that no duty was

therefore imposed on them, awarded, though estimating the service as very little beyond pilotage, 12*l.*, with costs. *The Eugenie*, 3 Notes of Cases, 430.

\* 45. By the *spes recuperandi*, in cases of derelict is meant the hope and expectation entertained by the master and crew of returning to their vessel, not what was the precise state of things, but what was the intention by which they were actuated at the time. *The Sarah Bell*, 4 Notes of Cases, 146.

† 46. In derelict cases it has been uniformly and properly the course to give more than in ordinary salvage cases, but it proceeds on the very same principle as in other salvage cases, viz. the danger of the property. *The Sarah Bell*, 4 Notes of Cases, 147.

47. In cases of derelict, it was the ancient rule of the Admiralty to give the salvors a moiety; and from authorities it may perhaps be gathered as the general sense of the maritime world at the present day, that the rate of salvage on derelicts should not, in ordinary cases, range below a third nor

to be decreed in cases of derelict. The *quantum* rests in the discretion of the Court. If there ever were an ancient rule fixing the amount at a moiety in all cases it has now become obsolete. *The Aquila, Lunsden*, 1 C. Rob. 42.

212. In no instance, except where the Crown alone has been concerned, and where no claim has been given for a private owner, has more than one half the value of the property salvaged been decreed by way of salvage. *L'Esperance, Stegman*, 1 Dodson, 49.

213. In cases of derelict the Court not unfrequently gives one half of the value of the property salvaged. *The Blendenhall, Barr*, *Ibid.* 423.

214. It is only in very particular cases that the Court gives more than a moiety. *The Reliance, Wiley*, 2 Hagg. 90. n.

215. There are no cases of salvage of derelict, except for salvage to a King's ship, or where the property is small, in which more than a moiety has been awarded. *The Britannia, Plash*, 3 Hagg. 154.

216. By the old law in cases of derelict half the value was always given, but it has been long held that the proportion is discretionary and dependent on circumstances. Seldom, however, more than one half or less than one third is given. *The Effort*, *Ibid.* 167.

217. In civil salvage there is no fixed proportion applying to all cases; there is a discretion. In derelicts where an owner appears there is no instance in which more than half or less than one third is given. *The Exwell Grove, Burton*, *Ibid.* 221.

218. The more modern decisions, in allotting salvage in cases of derelict, have departed from the old rule of giving a moiety, and have rather tended to give a third or thereabouts of the value of the property salvaged. *The Thetis*, 2 Knapp, 410.

(b) *Where more than a moiety was awarded.*

219. In a case of salvage of a derelict the salvage services being highly meri-

torious and long continued and the salvors numerous, two thirds decreed to the salvors on a value of 3400*l.* *The Jonge Bastiaan, Steyting*, 5 C. Rob. 322.

220. In a case of very meritorious salvage of the cargo of a total derelict, and where there was constant attention, risk, ready invention, and a mechanical apparatus contrived in a very elaborate and highly creditable way, the estimated value of the property recovered being 14,352*l.*, the Court directed payments and charges incurred by salvors, amounting to 2300*l.*, to be paid, and allotted to them 9000*l.* (rather more than two thirds) as salvage. There were eight principal and seventy-eight subordinate salvors. The Court also directed sufficient cargo to pay the salvage and expenses to be sold duty free. *The Jubilee*, 3 Hagg. 43. n.\*

221. In a case of salvage of a derelict sold by order of the Customs and the proceeds (35*l.*) paid into the registry, the amount being small and there being no appearance for the owners, the Court on motion waived the *primum decretum* and awarded the balance of the whole proceeds, after payment of costs, to the salvors. *The William Hamilton, Hughes*, *Ibid.* 168.

222. In a case of salvage of a derelict unknown the proceeds thereof decreed to eighty-two salvors subject to the costs of the Crown in relation thereto. *Ibid.* n.

*See ante*, Nos. 189, 190.

(c) *Where a moiety was awarded.*

223. A vessel having been discovered derelict by a sloop on her Majesty's service with a transport under convoy, and by them supplied with the necessary sails and rigging and worked into a place of safety, the nett proceeds of ship, cargo, and freight amounting to 12,000*l.*, a moiety decreed to the salvors; three fourths to the sloop and one fourth to the transport. *L'Esperance, Stegman*, 1 Dodson, 46.

224. A moiety given to salvors in a case

above a moiety of the value of the property. *Row et al. v. The brig ———*, 1 Mason's (AMERICAN) Rep. 377.

48. It seems that a moiety still continues to be the favourite proportion of judicial tribunals. In cases of derelict the old rule ought still to be considered as a subsisting but flexible rule, and that *primâ facie* the salvors are entitled to a moiety, thus making it incumbent upon the claimant to establish that under the special circumstances of the case a different measure ought to be applied. *Ibid.*

49. When it is said, however, that the rule is

flexible, it is not meant that it bends to every slight change of circumstances; but cases may occur of such extraordinary peril and difficulty, of such exalted virtue and enterprise, that a moiety, even of a very valuable property, might be too small a proportion; and, on the other hand, there may be cases where the service is attended with so little difficulty and peril, that it would entitle the parties to little more than a *quantum meruit* for work and labour. *Ibid.*

\* 50. A sale of cargo duty free to defray salvage is now no longer allowed.

approaching to derelict. *The Elliotta*, 2 Dodson, 75.

225. In a case of salvage of a derelict, the service being one of extraordinary merit, the proceeds being 600*l.*, and the number of salvors 400, the Court inclined to give a larger sum than a moiety, but (as no precedent for the allowance of a larger sum than a moiety in such cases could be produced) finally decreed a moiety only, directing the costs of the salvors to be paid out of the other moiety. *The Frances Mary*, *Kendal*, 2 Hagg. 89.

226. In a case of salvage of a derelict, the case being one of considerable merit, attended with great exertion and risk, the value of the vessel salvaged being 5668*l.*, a moiety decreed with costs of the salvors, which the Court directed to be paid out of the other moiety. *The Reliance*, *Wiley*, *Ibid.* 90. n.

227. In a salvage of great merit and danger of a derelict and her cargo, valued at 1739*l.*, a moiety awarded, costs and expenses being first deducted, except as to a commission of unlivery and appraisalment, which the owners having alleged the value at 800*l.* only, had been applied for by the salvors and granted. *The Britannia*, *Plash*, 3 Hagg. 153.

228. On salvage of a derelict value 420*l.*, 200*l.* and costs awarded to the salvors, and such award affirmed on appeal, with costs. *The Eugene*, *Bourne*, *Ibid.* 156.

229. In a case of meritorious salvage of a derelict by various salvors, the property salvaged being 1600*l.*, a moiety awarded. *The Effort*, *Ibid.* 165.

230. On salvage of a derelict by a smack, the total proceeds being 102*l.* 12*s.*, a moiety, deducting costs and expenses, decreed to the salvors. *The Twee Gebroeders*, *Zeeva*, *Ibid.* 430. n.

231. On salvage of a derelict by two vessels with risk and considerable labour, the value being 1800*l.*, a moiety, after deducting expenses, decreed between the salvors. *The Flora*, *Ibid.* n.

232. In a case of meritorious salvage of a derelict, value 1600*l.*, by a smack, two luggers, and an officer and ten men of the coast guard, a moiety decreed to the salvors. *The Helene*, *Breckwooldt*, *Ibid.* n.

233. On a claim for salvage by a vessel which postponed her homeward voyage in search of freight, and at the request of the master of a vessel wrecked went out of port to the wreck, about 500 miles distant, in the Chinese seas, and there with great risk and exertion for several days saved valuable property, which, being afterwards compelled by bad weather to put back to the same port, she there sold by auction, transmitting the proceeds to this Court to abide its award, the Court holding that the salvage was a very meritorious one and was due as for a derelict, the property being saved not merely from probable risk but absolute loss, the nett proceeds being 2731*l.* 8*s.*, awarded a moiety to the salvors. *The Martha*, *Viner*, 3 Hagg. 434.

234. A vessel having been found derelict with four or five feet water in her hold, and by great gallantry and perseverance brought to this country by seven salvors, whose services lasted from five to six weeks, the Court awarded to the salvors a moiety of the nett value. *The Watt*, 2 W. Rob. 70.

235. A derelict was discovered at sea about ninety miles N. W. of the Scilly Isles by a West Indiaman with a valuable cargo homeward bound, the master of which put his chief mate and three of his men on board, who brought her with difficulty to Milford Haven. On a value of 1153*l.* the Court awarded 550*l.* as salvage. *The Nicolina*, *Ibid.* 175.

*See post*, No. 257.

(d) *Where less than a moiety was awarded.\**

236. On a claim for salvage of a derelict preferred by ten men (the crew of a small vessel), the first salvors, by three men who subsequently rendered assistance, and

\* 51. A derelict dismasted, having her bowsprit carried away by the stern, part of her stern gone, and a piece of the rudder broken off, being at sea about four miles off Loophead, near the mouth of the Shannon, and drifting towards the Cliff, with a westerly wind and a lee shore, was discovered and with some danger boarded by eighteen men, pilots and others of the coast. She was by these parties, at considerable danger and with much labour, towed round the Cliff, where a heavy sea was running, to the mouth of the Shannon, where being joined by seventeen other salvors, she was, with their united assistance, towed up the Shannon and

brought to a safe anchorage, where they protected her from plunder and guarded her for several weeks until the owners came forward and received possession of her. The value of the ship and cargo was 20,000*l.* A tender of 1000*l.* had been made. The Court awarded 5000*l.* to the salvors, with costs. *The Queen v. The Windsor Castle*, decided in the High Court of Admiralty in Ireland, 2 Notes of Cases, 53. supplement.

52. A vessel in ballast, value 720*l.*, got on the Harbrough Sand, well known to be of a dangerous character; the vessel was waterlogged, and the master and crew, alarmed for their lives, took to

by a magistrate, which latter person only sent a few men to assist in righting the vessel in harbour and to keep off plunderers, two fifths of the value awarded as salvage. Half shares only awarded to the second salvors, as having rendered services of a subordinate nature to those of the first salvors, and the claim of the magistrate pronounced against. *The Aquila, Lunsden*, 1 C. Rob. 45.

237. In a case of salvage of a derelict attended with no very great danger two fifths given. *The Fortuna, Quest*, 4 C. Rob. 193.

238. In a case of salvage of a derelict of the value of 72,000*l.*, 7000*l.* awarded, with costs of salvors. *The Blendenhall, Barr*, 1 Dodson, 423.

239. In a case of derelict, the salvage service being very meritorious, and the value of the vessel and cargo saved 2394*l.*, the Court, holding two fifths to be the usual proportion allotted in such cases, awarded two fifths of the whole value accordingly to the salvors, and out of the remaining three fifths a sum of 100*l.* to a revenue cutter (whose claim was objected to, but who rendered some useful but not necessary service in towing), with the costs of all the salvors. *The Charlotta, Nesser*, 2 Hagg. 361.

240. On salvage of a derelict (sold at 250*l.*) by a yawl and smack, 100*l.* and costs awarded, considerable skill and management having been shown by the salvors. *The Queen Mab, Tallman*, 3 Hagg. 242.

241. In a case of acknowledged very meritorious salvage service effected by King's ships, viz. recovery from a total derelict wreck under circumstances of great difficulty, danger, and trouble, treasure amounting to 157,000*l.*, the Court awarded, after payment of expenses, 17,000*l.*, being about one eighth of the nett, and together with the expenses one fourth of the gross, value of the property saved. *The Thetis*, *Ibid.* 14. 63. On appeal a further sum of 12,000*l.* awarded, with costs. *Ibid.* 2 Knapp. 408.

242. A derelict value 15,000*l.* having been found drifting in the Irish Channel

with between two and three feet water in her hold, and brought into Holyhead by three salvors, being part of a crew of six persons belonging to a small schooner which discovered the derelict and afterwards accompanied her back to Holyhead, the Court awarded 1800*l.* as salvage. *The Carolina*, 2 W. Rob. 124.

#### 8. In cases of derelict goods, tackle, &c.\*

243. A vessel derelict, waterlogged, and very disabled, having been met with by another vessel, the master and mate of which fished down the hatchway of the derelict, and dragged up certain property, which they afterwards used up and shared amongst their crew, a monition at the instance of the King in his office of Admiralty was decreed against them to show cause why the same should not be brought into the registry, to be proceeded against as droits of Admiralty. The property having been afterwards brought in by the master pursuant to the monition, and with an affidavit as to the goods found, and his ignorance of the law requiring a condemnation thereof, the property was condemned as a droit of Admiralty, and on a prayer of the master for a salvage remuneration, a moiety thereof decreed to him. *The King v. Property Derelict*, 1 Hagg. 383.

*See antè, Nos. 53, 54. 108.*

#### 9. Rates of salvage of droits of Admiralty.

244. By 9 & 10 Vict. c. 99. s. 20. the Receiver General of Droits may make and alter rules for regulating the rate of salvage to be paid by the receivers of droits when any ship, vessel, or boat, goods, tackle, stores, &c. shall not be proved to belong to any owner or other person, and shall be sold as droits of Admiralty as therein-before directed (see s. 11.).†

*See antè, No. 54.*

#### 10. In cases of salvage to whaling vessels.

245. On salvage of a fishing smack,

their boat and made for the Harbrough light vessel. Two yawls, with twenty-five men on board, made for the vessel, which they found with five feet water in her hold, without her rudder, and her sails in confusion. They succeeded in getting the vessel off the sand, and took her into Blakeney harbour; 260*l.* awarded as salvage. *The Sarah Bell*, 4 Notes of Cases, 145.

\* 53. In a case of money found derelict, no owner appearing, a moiety was granted to the salvor. *The King v. Property Derelict*, 1 Hagg. 383.

† No regulations under this section have as yet been made.

frozen up in Davis's Straits, effected by three other whaling vessels, 700*l.* awarded in addition to the bounties given by the treasury. Such bounties, however, *Held* to be a sufficient recompense and bar to all claim for demurrage and payment of stores, and for early sailing. Salvage apportioned as follows, 300*l.* to the smack, and 200*l.* to each of the two boats by which she was assisted. *The Swan, Dring*, 1 W. Rob. 68.

*See ante*, Nos. 113, 114, 115.

#### 11. In cases of salvage by transhipment.

246. The Court looks with jealousy on salvage by transhipment, as leading to deception on owners and underwriters. It is to be vigilantly watched how far a ship giving assistance in distress adopts the best measures. *The Hope, Norman*, 3 Hagg. 424.

247. Mere transhipment of cargo is not a salvage service, and the Court of Admiralty has no jurisdiction to entertain a claim for reward for such a service, but *aliter* if the cargo were in danger at the time. Such service then assumes a salvage character, not affected by the degree of danger. *The Westminster*, 1 W. Rob. 231.

248. On salvage of the crew and portion of cargo (value 7000*l.*) by transhipment (on board a valuable Indiaman) from an American ship in a sinking state, about 300 miles eastward of the Cape of Good Hope, 2000*l.* awarded. *The Hope, Norman*, 3 Hagg. 423.

249. On claim for salvage effected by transhipment of a portion (of the value of 24,000*l.*) of a cargo of tea (of the value of 40,000*l.*) by three large steamers of the

value of upwards of 30,000*l.*, with crews of fifty-eight men in all, and engaged, one for six days, another for four days, and another for three days, the cargo being at the time in danger of being lost, or at least much damaged, from the ship having struck on the rocks, 1500*l.* awarded on the cargo salvaged and the freight thereof. *The Westminster*, 1 W. Rob. 229.

#### 12. Where the services were rendered by officers and ships in the service of Government.\*

250. In a salvage suit, a King's ship and crew being the salvors, and the services very meritorious, one tenth of the value of ship, cargo, and freight decreed, and distribution directed to be made according to the prize proclamation then in force. *The Mary Ann, Ferrier*, 1 Hagg. 158.

251. On a claim for salvage preferred by the commander, officers, and crew (130 men) of a Government steamer, the use of which for the purpose had been applied for by the owners of the vessel salvaged, and granted by the Admiral on the stipulation that the owners and underwriters would be answerable for the stores expended or damaged; *Held*, that such stipulation was no bar to their claim for reward for personal service, but only a reason for a less remuneration. The services having lasted nineteen hours, and been attended with much risk and labour, 100*l.* and costs awarded. *The Lustre, Finlay*, 3 Hagg. 154.

252. In a case of salvage effected by a Government steam-vessel at some, though not great personal risk, under great responsibility, which was *held* equivalent to a

\* 54. A brig having got on shore on a shoal off Tenedos, and all the endeavours of those on board to get her off having proved unsuccessful, was towed off by one of his Majesty's steam-vessels and into Basika Bay, where she was anchored in safety. In a suit for salvage in respect of such services, the owners of ship and freight tendered 100*l.*; the owners of cargo contended that the crew of a Queen's ship were not entitled to claim a reward for so slight a service. The Court pronounced for the tender, condemned the salvors in costs of the owners of ship and freight, and decreed against the owners of cargo, according to the value of the cargo, the same proportion as 100*l.* bears to the ship and freight, and condemned the owners of cargo in costs. *The Iodine*, 3 Notes of Cases, 140.

55. The commander of her Majesty's ship *Cygnat*, on the coast of Africa, having met with a merchant vessel, the master of which and one of the crew were sick, and the mate was incompetent to navi-

gate her, removed the master and sick seaman on board his own ship, and put his gunner and three of his men on board, accompanying her in his own vessel and occasionally taking her in tow to Prince Edwards Island, where the *Cygnat* was bound. The vessels then parted company, the gunner and one seaman returning on board the *Cygnat*, the sailing master of which was sent on board and took charge of her to England. The sailing master and the two seamen were entered on the ship's books and received wages for the voyage to England: *Held*, that the commander was entitled to claim salvage on behalf of himself, his officers, and crew, in respect of such services; 150*l.* awarded, the value of ship and cargo being 1300*l.* *The Charlotte, Wylie*, 5 Notes of Cases, 4.

*Quare*, as to the right to salvage of the two seamen put on board the vessel, and who signed articles and received wages for the home voyage. *Ibid.*



risk of life, the value of the property salvaged, which was in extreme danger, but not a derelict, being 6000*l.*, and the number of salvors 200, one third of the value had been awarded by magistrates at Jamaica (where the salvage was effected) on reference to them under a local act, which award, however, was held not binding in the Court of Admiralty; the Court proposed to give one fifth or about 20 per cent. with costs, but to prevent disputes as to value awarded 1200*l.* and costs. *The Ewell Grove, Burton*, Ibid. 209.

253. In cases of recapture by a privateer one sixth, and by a King's ship one eighth, is awarded. By parity of reason and fair analogy, a similar principle may apply in cases of civil salvage effected by vessels in the public service. *Ibid.* 224.

254. To entitle King's ships to a salvage remuneration for services to a private ship, the services must be important, and even then the remuneration would be less than to a merchant ship, on the same principle as in war salvage. *The Rapid, Cochrane*, Ibid. 421.

255. Officers and crews of King's ships are entitled to salvage remuneration for personal risk and labour encountered in a salvage service, on the same footing as other salvors. On salvage of a vessel (valued at 7384*l.*) effected by the conjoint assistance of the officers and crew of a Government steamer and the crews of eight smacks, 1800*l.* awarded as salvage, and apportioned as follows, 1000*l.* to the officers and crew of the steamer, and 800*l.* to the smacks. *The Wilsons, Hunter*, 1 W. Rob. 172.

See *antè*, Nos. 41. to 48.,  
and notes, Nos. 239. 241.,  
and No. 207.

13. *Where the services were rendered to ships in the service of Government.*

256. Government should not reward less liberally than private individuals, but on grounds of public policy they should rather give more, having in view the general interest and security of navigation. *The Marquis of Huntley, Molisson*, 3 Hagg. 248.

See *antè*, No. 13.

14. *Where the services were rendered by foreign ships to British ships.*

257. A Dutch ship, which, having gone to the assistance of a British merchant vessel almost in a sinking state, and whose crew refused to stay by her any longer, received on board the master, officers, passengers, and crew, and valuable treasure,

and brought them to England, *Held* entitled to salvage as for a derelict. On a value of 10,000*l.* a moiety decreed to the salvors, costs and expenses being first deducted. *The Columbia, Thornton*, 3 Hagg. 428.

15. *Where the salvaging ships were steam-vessels.*

258. The Court inclines to give as much encouragement as possible to salvage exertions of steam-vessels, on account of the great skill and power of vessels of that description. *The Raikes, Gardiner*, 1 Hagg. 246.

259. When steamers render assistance they are considered as entitled to liberal rewards. *The London Merchant, Laker*, 3 Hagg. 401.

260. Steam-vessels usually belong to great and opulent companies, and are fitted out at great cost. On these considerations, when they afford assistance, they obtain a large remuneration. *The Perth, Spink*, Ibid. 416.

261. A steam-vessel specially summoned by signal or otherwise to the assistance of a vessel is to be remunerated for the distance she has to come in order to reach the vessel. *The Graces*, 8 Jur. 501., 2 W. Rob. 294.

262. A vessel reduced to a mere hull and without the means of getting into port, was towed by a steamer, herself so much damaged as to require to go into port to refit, a distance of 480 miles, in the course of four days. On a value of 10,500*l.* the Court, though animadverting on the misconduct of the salvors after the ship had been brought to an anchor, allotted 2100*l.* as salvage, besides costs and damages. *The Sussex, Roxly*, 3 Hagg. 339.

263. On a claim of salvage preferred by a steamer for towage of a dismasted vessel for nineteen hours and about 105 miles, 750*l.* and costs awarded on a value of 9500*l.* *The Meg Merrilies*, Ibid. 346. n.

264. On a claim for salvage preferred by a large steamer for towing a vessel (in a disabled and hopeless state, and having a signal of distress flying) during twenty-nine hours, the Court observing on the necessity of giving an ample reward to large steamers for such services, decreed 900*l.* on a value of 4000*l.* *The Earl Grey, Topham*, Ibid. 363.

265. On a claim for salvage preferred by a steamer of fifty horse power, for towing in very violent weather and for three hours, to a place of comparative safety, a vessel which had struck and was bumping on a sand,

with a signal of distress hoisted, and in a very helpless and perilous state; 1000*l.*, being not quite 10 per cent., awarded, with costs, on a value of 12,246*l.*, though the steamer did not go out on purpose, there was no extraordinary risk or peril to her or the persons on board her, the time was short, and the distance near to port. The stipulated payment to a steamer hired to bring her into port *Held* not to be the criterion for a salvage remuneration. *The Traveller, M'Clear*, *Ibid.* 370.

266. A vessel got on a sand ten miles from Calais, where, in consequence of the state of the weather, no steamer could for four days be prevailed upon to go to her assistance; she was without a rudder and dismantled (but had in the meantime received some assistance from three fishing boats), and was on the fourth day got off and towed into Calais by a steamer engaged for the purpose. 800*l.*, being one fifth of the value of the vessel saved, awarded to the salvaging steamer. *The United Kingdom, Allen*, *Ibid.* 401. n.

*See antè, Nos. 196. to 198., notes 42, 43., Nos. 249. 252., and post, No. 283.*

16. *Where the ships salvaged were steam-vessels.*

267. In cases of salvage of steam-boats carrying passengers, the salvage reward is not to be estimated by the same considerations of value as with regard to other vessels. Steam-vessels are a peculiar species of vessels making large profits, and are not therefore to pay for such services as though only carrying ballast. Humanity requires that every possible encouragement, in the way of liberal reward, should be given, in order to induce a prompt and efficient assistance to them, and the reward must be beyond a mere proportion of the value, as in ordinary cases. *The Ardincaple, M'Leod*, 3 Hagg. 153.

268. A great steam navigation company is peculiarly bound to encourage salvage

assistance. *The London Merchant, Laker*, *Ibid.* 400.

269. A steam-vessel in a very perilous state during a storm, twelve miles from shore, having a number of passengers on board, was relieved by two smacks, who came out to her with great alacrity, one of them slipping her cables. One of the smacks with great difficulty succeeded in taking her passengers on board and landing them safely, and the other towed her into harbour. The value of ship and cargo was estimated at 1265*l.*; 250*l.*, including damages and costs, was tendered; the Court awarded 350*l.* besides costs. *The Ardincaple, M'Leod*, *Ibid.* 151.

*See antè, No. 196.*

17. *Where the services were rendered by pilots.\**

270. *Semble* that in an extraordinary case the safe conduct of a ship into port under circumstances of extreme danger and personal exertion may exalt a pilotage service into something of a salvage service. But in general they are distinguishable enough; and the pilot, though he contributes to the safety of the ship, is not to claim as a legal salvor. *The Joseph Harvey, Paddock*, 1 C. Rob. 306.

271. The nature of the service and the provisions of the Pilot Acts have fixed a rate of remuneration on a liberal scale to pilots; and in return they are under an obligation to afford their assistance in all weathers, unless under circumstances of absolute danger to their lives. *The General Palmer, Truscott*, 2 Hagg. 177. 179.

272. Claims of salvage set up by pilots are *stricti juris*, unless the circumstances of the case distinguish such a claim greatly from general pilot service; the Court will construe it strictly with reference to the Pilot Acts, and award the remuneration there given as for pilot service only. *Ibid.* 177, 178. n.

273. It is a settled doctrine of the Admiralty Court that no pilot is bound to go

\* 56. A pilot while acting in the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation for extraordinary services, as contradistinguished from ordinary pilotage for ordinary services, cannot be entitled to claim salvage. In this respect he is not distinguished from any other officer, public or private, acting within the appropriate sphere of his duty. *Hobart et al. v. Drogan et al.*, 10 Peters' (AMERICAN) Rep. 108.

57. But a pilot, as such, is not disabled in virtue of his office from becoming a salvor; on the con-

trary, whenever he performs salvage services beyond the line of his appropriate duty, or under circumstances to which those duties do not justly attach, he stands in the same relation to the property as any other salvor, that is, with a title to compensation to the extent of the merit of his services, viewed in the light of a liberal public policy. *Ibid.*

58. What a pilot does beyond the limits of his duty as such may be the foundation of a claim for salvage, but not such acts as are within his duty, however meritorious. *Hand et al. v. The schooner Elvira*, Gilpin's (AMERICAN) Rep. 60.

on board a vessel in distress to render pilot service for mere pilotage reward. His refusal under such circumstances would subject him to no censure; and if he did take charge of a vessel so circumstanced, he would be entitled to a salvage remuneration. *The Frederick, Thurman*, 1 W. Rob. 17.

274. Pilotage is confined to conducting into port a vessel in no state of distress or alarm, or having no apprehension of distress arising from antecedent causes. The scale of remuneration to pilots has been calculated on such definition; where the pilot's services exceed mere pilotage, they are to be rewarded for them as salvors, and not as pilots. *The Elizabeth*, 8 Jur. 365.

275. The claims of pilots and salvors stand on different grounds, and their services are paid for on different principles. A pilot is entitled to what may be deemed a quasi monopoly. If there be one on the coast he must be employed. He has no right to be engaged in any other occupation, and he is paid, not in conformity with the nature of the service which he performs, but in conformity with the draught of the vessel. There is, however, no legal obligation on salvors to go on board, and they are entitled to be paid for their services, not merely as pilots, but also for any loss they may sustain in the employment of the vessel. *The Cumberland*, 9 Jur. 191.

276. A suit for salvage, instituted by a pilot appearing to have advanced false pretensions, and to have misconducted himself, dismissed with costs, and the conduct of the pilot reported to the Trinity House. *The Joseph Harvey, Paddock*, 1 C. Rob. 306.

277. In extraordinary pilot services additional pilotage is the proper rate of reward; double the ordinary rate of pilotage allotted by the Court, with 15*l.* *nomine expensarum*, in such a case. *The Enterprize, Crosbie*, 2 Hagg. 178. n.

278. Parties acting in and assuming the characters of pilots, and whose services are engaged in that capacity, held not to be entitled to be rewarded as salvors, but compellable to adopt the rules and be remunerated after the rate of pilot services. On a claim for salvage by such parties, tender of 1*l.* 10*s.* pronounced for. *The Columbus, Nerroll*, 2 Hagg. 178. n.

279. On application of a pilot for salvage, by reason of his pilot-boat having been, at his recommendation, employed in towing the vessel for three hours, and during which the pilot-boat sustained some little damage, a tender of 20*l.* before and 50*l.* after action having been refused, claim pronounced against, the Court and Trinity Masters holding the towing not to have been absolutely necessary, and that the pilot was bound to perform it, having a claim for extra labour, &c., and for compensation by reason of damage. Tender pronounced for; but, under the circumstances, without costs. *The General Palmer, Truscott*, Ibid. 176.

280. In a case of salvage far exceeding mere pilotage, attended with risk, danger, and labour to the salvors, a pilot and his crew, and to their vessel, on reference thereof, by consent of the salvors and of the master of the vessel saved, to two sub-commissioners of pilotage resident in the neighbourhood, 120*l.* and expenses on a value of 2000*l.* awarded. The owner having refused to pay the amount awarded, and the salvors having instituted a suit in the Court of Admiralty, the same amount of salvage and expenses decreed, with costs. *The Industry, Davis*, 3 Hagg. 203.

281. Services rendered by pilots, though of no great merit, held to exceed mere pilotage services, and 20*l.* awarded accordingly, overruling a tender of 10*l.* *The Elizabeth*, 8 Jur. 365.

282. Pilots going on board a vessel in a leaky state, and assisting the crew in keeping down the water, by pumping, and in laying out and afterwards slipping and recovering an anchor and cable, are entitled to be rewarded as salvors. In such a case the value of the property being 870*l.*, 65*l.* awarded to pilots as salvage, and tender of 42*l.* overruled. *The Hebe, Cole*, 2 W. Rob. 246.

See *antè*, Nos. 58. to 60.

195. 200, 201.

#### 18. On appeals from awards of Commissioners of Cinque Ports.\*

283. On appeal from an award of 115*l.* by Commissioners of Salvage under 1 & 2 Geo. 4. c. 76. for salvage services rendered by a steam-boat, 200*l.* and costs of appeal de-

\* 59. On an appeal from an award of Commissioners of Cinque Ports, allotting 95*l.* as salvage for carrying out an anchor and chain cable from Deal to a vessel in Margate roads, in no distress, and no risk being incurred by the salvors, the

award reversed, and 65*l.* allotted, but no costs given, though the Court expressed itself as entertaining a very strong opinion as to the excess of the award. *The David Luckie* (1840), 9 Monthly Law Mag. (Notes of Cases), 212.

creed, the property salvaged being of the value of 12,500*l*. *The Raikes, Gardiner*, 1 Hagg. 246.

284. On appeal from an award of 320*l*. by Cinque Port Commissioners for salvage services to a vessel value 2500*l*., the award reversed, and 125*l*. only allotted, the Court holding the services to be very slight, and hardly amounting to salvage, there being no danger, and little labour. Costs of respondents refused. *The Henry of Philadelphia, Palesti*, Ibid. 264.

19. On appeals from awards of magistrates.\*

285. In appeals from awards of magistrates in salvage cases, the Court of Admiralty inclines strongly to support the awards, unless inconsistent with the general principles, or chargeable with excess in comparison with the principles, applied to cases of a similar kind in this Court. *The Vesta, Thompson*, 2 Hagg. 192.

286. An appeal from the award of magistrates in a salvage case, allotting two fifths of the value, pronounced against, that proportion being held not to be excessive, the salvage having been laborious, and attended with risk. Ibid. 189.

287. An appeal from an award of magistrates, allotting one third of the value of the cargo salvaged, the property amounting to 9680*l*., for laborious salvage services during fourteen days, attended with risk, the ship having struck on a sand, from which she could not be got off, pronounced against, and the award affirmed with costs. *The Brothers, Stewart*, Ibid. 195.

288. On appeal by the owners from an award of salvage by magistrates, the value of the vessel having, under a second appraisal made in the Court of Appeal, been considerably reduced, the Court reversed the award, reduced the amount of salvage awarded, and gave a fixed amount and the costs of the salvors, both before the magistrates and on the appeal, together with

the amount of the losses and damage sustained by the salvors in rendering the service, and which it referred to the registrar and merchants to investigate. The Court apportioned the salvage according to the respective merits of the salvors, instead of giving a specific proportion of the value among them generally, as allotted by the award. *The Oscar, Lofgren*, Ibid. 257.

289. An award by magistrates of 1000*l*. in respect of a salvage service reversed on appeal, the service not having been attended with much labour or danger; 600*l*. decreed, salvors' costs allowed. *The General Palmer, Thomas*, Ibid. 323.

290. In a case of salvage of an anchor and seventy-two fathom of chain cable, with buoy and buoy rope, value 20*l*., an award was made by magistrates of 4*l*. 10*s*. for salvage, and 2*l*. 15*s*. for expenses. The award reversed on appeal, and two fifths, after deducting incidental charges, allotted. *The Ocean, Wabourne*, 3 Hagg. 194.

291. An award of salvage by magistrates held to be faulty in not having discriminated between the services of the different salving vessels not of the same degree of merit. *The General Palmer, Thomas*, 2 Hagg. 324.

292. In an original proceeding in the Admiralty Court for salvage, in which an award had been made by magistrates *sec. stat.*, *quære*, is not the owner not appealing from the award, though refusing to pay the sum awarded, bound by the award? *The Hector, Freeman*, 3 Hagg. 93.

20. Where previous awards had been made under arbitration.

293. The Court is unwilling to discourage the settlement of questions of salvage on the spot (in a distant port) in a fair and liberal manner, and inclines to support such settlements. *The Sir Francis Burton, Hare*, 2 Hagg. 157.

294. In a suit for salvage of a foreign

60. On appeal from an award of Commissioners of Cinque Ports, allotting 200*l*. as salvage for carrying out two anchors with appropriate chains, from Dover to the vessel off Hythe, award reversed; tender of 105*l*. also pronounced against, and 120*l*. awarded. No costs given. *The Lord Goderich* (1841), 10 Monthly Law Mag. (Notes of Cases), 217.

\* 61. A vessel on her beam ends, dismasted, the signal for assistance being nailed on the stump of the mast, with five feet water in her hold, was fallen in with off Southwold, on the Suffolk coast, by two fishing smacks, who towed her into Yar-

mouth; the salvors incurred some danger in approaching the vessel, rendered their assistance promptly, and their services lasted about three days. In proceedings before magistrates for salvage a sum of 500*l*. with costs was awarded by them, the value of ship and cargo being 2400*l*.; on appeal therefrom to the Court of Admiralty (in which the case of *The Oscar* was cited), the Court, though considering the sum allotted a liberal salvage, reaching the full extent of the merits of the case, confirmed the award with costs. *The Despatch* (1839), 4 Monthly Law Mag. (Notes of Cases), 87.

vessel, a tender having been made by the consul on behalf of the owners of 50*l.*, which was refused by the salvors, and an arbitration agreed on, under which 190*l.* was awarded, to which the consul would not agree, the tender pronounced for as sufficient, and salvors' costs refused. *The Eleonora Charlotta, Osterman*, 1 Hagg. 156.

21. *Where mutual benefit was rendered and received by the salvors.*

295. In a case of salvage rendered by one ship to another, both being chartered by the East India Company and sailing together in association and under the same orders, the salvage being very meritorious, the property saved 275,000*l.*, but the vessel saved having rendered efficient service to the salvor when in distress in the course of the voyage, 4000*l.* awarded. *The Waterloo, Birch*, 2 Dodson, 443.

296. A vessel struck on a reef of rocks near the island of Cuba, and was abandoned by her crew. Another vessel was abandoned near the same spot, and her crew, in their boats, having fallen in with the first vessel, got her off the reef, and brought her to England. On a value of 1237*l.* the Court awarded 350*l.* and costs, intimating that the case was one in which mutual benefit was rendered and received by the salvors. *The Two Friends*, 8 Jur. 1011.

297. Claim of the owner of the second vessel to participate in the salvage award rejected. *Ibid.*

22. *How affected by subsequent misconduct of salvors.*

298. Services of the highest class of salvage may be lessened by subsequent misconduct, and especially by exorbitant demands. *The John and Thomas, Baxter*, 1 Hagg. 157. n.

299. The Court, in allotting a salvage reward, reduced the amount due in respect of the services rendered, on the ground of the salvors having interfered with the master in attempting to exclude further assistance. *The Dantzic Packet, Tanner*, 3 Hagg. 383.

300. In allotting a salvage remuneration the Court made a deduction from the sum allotted to the salvors, to compensate the crew of the derelict for clothes on board, which had been lost or made away with by the salvors, the Court not imputing to them any felonious intention. *The Louisa*, 2 W. Rob. 26., 7 Jur. 182.

*See ante*, Nos. 129. to 135.  
and notes, No. 262.

23. *Other cases.\**

301. One hundred pounds and disbursements awarded to the reeve or deputy of a lord of the manor, for custody of wreck, in lieu of salvage as such deputy, without prejudice to the rights of the lord of the manor. Ship and cargo condemned in that sum, and the expenses of both parties. *The Augusta, Lovell*, 1 Hagg. 21.

302. Claim for salvage, unopposed, preferred by some fishermen, who discovered a whale three miles from the shore, and towed it to land, pronounced for, and the produce of the whale decreed to them. *The Lord Warden of the Cinque Ports v. The King in his Office of Admiralty*, 2 Hagg. 438.

*See SALVAGE (Mixed).*

XIV. OF THE APPORTIONMENT OF —

1 *Of the principles of — with reference to owners of salving vessels.†*

303. In apportioning salvage between the owners and crew the distribution must depend upon the peculiar circumstances of each individual case. Where no risk has

\* 62. On a claim for salvage in respect of services rendered by a vessel sailing in company with another to her consort, and consisting of a deviation for the purpose of accompanying the vessel to the nearest port in consequence of her having sprung a dangerous leak, of assistance of the ship's carpenter and others in repairing the leak, and of general advice and assistance, the value of the property saved being 16,000*l.*, the Court awarded 300*l.* as salvage. *The Ganges, Steel*, 1 Notes of Cases, 87.

63. Compensation granted for keeping company with a vessel in distress, at the earnest request of the master and crew, although no actual aid was rendered; the crew admitting that they derived much comfort from the presence of the libellants,

as they could rely upon them in case of greater danger. *Allen et al. v. The ship Canada*, Bee's (AMERICAN) Rep. 90.

† 64. The Maritime Law, looking to the general benefit of commerce, does not prevent the master from deviating to save property in distress, if he deem it fit in a sound exercise of his discretion. As between himself and his owners, the usage of the world has clothed him with this authority; and in return for such extraordinary hazards, it has enabled the owner to partake liberally in the salvage reward for the meritorious service, when it is successful. *The Boston and cargo*, 1 Sumner's (AMERICAN) Rep. 328.

65. In the distribution of the salvage, the owner of the salving ship ought, under ordinary circum-

been incurred by the vessel rendering assistance, it is not usual to decree to the owners any large portion of the salvage, which more properly belongs to the individuals whose services have effected the preservation of the vessel saved. *The Nicolina*, 2 W. Rob. 175.

304. In apportioning a salvage remuneration between the owners and crew of a salving vessel, the Court will not take into consideration the probable vitiation of a policy of insurance effected on the salving vessel. In all such cases it will consider every vessel as uninsured. *The Deveron*, 1 W. Rob. 180.

305. The owners of fishing vessels are entitled to a more liberal allotment than the owners of other vessels, because their occupation is interrupted, and the expense of navigating them is larger than in ordinary cases, so far as regards the wages of the mariners. *The Louisa*, 2 W. Rob. 26.\*

306. On appeal by owners from an award of magistrates, which the Court held to be rightly brought, it will take into consideration the owners' expenses of the appeal (being considerable) in apportioning a salvage remuneration. *The Oscar, Lofgren*, 2 Hagg. 260.

## 2. Claims of the Admiralty quâ owners.

307. In a case of salvage effected by King's ships, a claim of the Admiralty for wages and victualling of the men, and for wear and tear of the ships, amounting together to 13,800*l.*, allowed, as not being opposed by the owners, but only by some of the salvors, the Court holding that the salvors had no reason to complain of being so supplied; but it declined to give any opinion on the claim beyond drawing the distinction between the assistance afforded in ordinary cases by public vessels, for which nothing had been charged, and the appropriation of them, with additional supplies of men and stores, for eighteen months together, to an exclusive service, as in this case. *The Thetis*, 3 Hagg. 62. Affirmed on appeal, 2 Knapp, 409.

## 3. With reference to antecedent agreements for —

308. A sum of 500*l.* having been awarded for a salvage service, which sum had been apportioned by the company to which the salving vessel belonged according to a scale of distribution laid down by them, on application to the Court on behalf of four of the seamen for a more equitable allotment, the following apportionment decreed:—

|  | £    | s. | d. |
|--|------|----|----|
| To the owners - - -                            | 415  | 0  | 5  |
| To the master - - -                            | 28   | 6  | 8  |
| To the first mate - - -                        | 10   | 2  | 4  |
| To the engineer - - -                          | 10   | 2  | 4  |
| To the second mate - - -                       | 8    | 1  | 10 |
| To three seamen (being                         |      |    |    |
| 8 <i>l.</i> 1 <i>s.</i> 10 <i>d.</i> each) - - | 24   | 5  | 6  |
| To one apprentice boy - -                      | 4    | 0  | 11 |
| <i>The Beulah</i> , 1 W. Rob.                  |      |    |    |
| 477., 7 Jur. 207., 2                           | £500 | 0  | 0  |

Notes of Cases, 409.

309. In apportioning a salvage award the Court will not consider itself bound by an agreement, made anterior to the salvage in question, between the owners and the crew, respecting the relative apportionment of all salvage awards between them. A scale of apportionment drawn up under such an agreement overruled, and a fresh apportionment made by the Court. *The Louisa*, 2 W. Rob. 22.

310. By 7 & 8 Vict. c. 112. s. 5. no clause, contract, or engagement, whereby any seaman shall consent to forego any right or claim to such proportion of salvage as may be due to him by decree, or, award, or otherwise, shall be valid or binding on such seaman.

311. Prior to the stat. 7 & 8 Vict. c. 112. s. 5. an agreement for an equal distribution of a salvage reward, signed by the mate, the second in command in the salving vessel, but placed in the chief command over the vessel saved (a derelict), and the parties (part of the crew of the salvor) effecting the salvage was held to bind those under him, he being by such circumstances in point of fact master of the derelict. *The Baltimore, Baker*, 2 Dodson, 137.

stances, to be allowed one third of the salvage. In cases of extraordinary merit or extraordinary peril to the ship, he may found a claim to a higher salvage. *The Henry Ewbank and cargo*, Ibid. 400.

\* 66. In salvage cases, where it is proved that there has been an actual loss to the owners of the

salving fishing smacks, owing to the interruption of the fishing voyage, the Court will take that circumstance into consideration in allotting the amount of salvage. *The Catherine Anna Helena* (1839), 5 Monthly Law Mag. (Notes of Cases), 43.

## 4. In cases of derelict.

312. In a case of salvage rendered by one ship to another, both being chartered by the East India Company, and sailing together in association and under the same orders, the salvage being very meritorious, but the vessel salvaged having rendered efficient service to the salvor when in distress in the course of the voyage, the Court having awarded 4000*l.* as salvage, apportioned the same as follows:—

|   |              |
|---|--------------|
| To the owners, the salving vessel having been much strained, and requiring repair, in consequence of having taken on board her a large portion of the cargo of the vessel salvaged, | £ 2000       |
| To the commander - - -  | 500          |
| To the officers and crew, to be distributed in the same manner as prize proceeds - -  | 1500         |
| <i>The Waterloo, Birch, 2 Dodson, 443.</i>  | <u>£4000</u> |

313. In a case of acknowledged very meritorious salvage service effected by King's ships, viz. recovery from total derelict wreck, under circumstances of great difficulty, danger, and trouble, treasure amounting to 157,000*l.*, the Court, having awarded, after payment of expenses, 17,000*l.*, decreed the same to be distributed as follows:— To the admiral of the station, a salvor, such share thereof as he would have been entitled to in a case of prize as flag-officer. The remainder to the commanders, officers, and crews of the two King's ships and their assistant vessels engaged in the service, rateably according to the value of the treasure saved by them, one having superseded the other in the course of the service; 1000*l.* deducted and distributed as additional rewards to certain officers and men whose services were peculiarly meritorious, and to the widow of one of them, and to one of the assistant vessels in respect of services subsequent to those for which she would share in the general allotment. *The Thetis, 3 Hagg. 14. 63.* On appeal, a further sum of 12,000*l.* having been awarded, such sum was directed to be distributed between the admiral, captain and crew of one of the King's ships, the principal salvors, according to

the proportions mentioned in the Order in Council\* of 1827, (regulating the distribution of prize proceeds), viz. one eighth to the admiral of the station; two eighths to the commander of the King's ship, the principal salvor; and the remaining five eighths among his officers and crew. *Ibid. 2 Knapp, 409.*

314. In a case of salvage of the crew and a portion of cargo (value 7000*l.*) by transshipment (on board a valuable Indiaman) from an American ship in a sinking state, about 300 miles eastward of the Cape of Good Hope, the Court having awarded 2000*l.* as salvage, apportioned it as follows:

|   |     |
|---|-----|
|   | £   |
| To the owners - - -   | 850 |
| To the captain - - -  | 350 |
| To the first mate - - -   | 100 |
| To the second mate - - -  | 50  |
| Among the passengers, sharing as able-bodied seamen, and the crew in proportion to their wages, and three apprentices sharing with the seamen at the lowest rate, the remainder - - - | 650 |

*The Hope, Norman, 3 Hagg. 423.* £2000

315. A salvage award of 5000*l.* to a Dutch ship, for having gone to the assistance of a British merchant vessel almost in a sinking state, and whose crew refused to stay by her any longer, and received on board the master, officers, passengers, and crew, and valuable treasure, and brought them to England, apportioned as follows:—

|   |      |
|---|------|
|   | £    |
| To the owners - - -   | 2500 |
| To the captain - - -  | 1250 |
| Among the officers and crew, in proportion to their wages, as specified in the muster roll, the remainder - - - | 1250 |

*The Columbia, Thornton, Ibid. 428., 2 Monthly Law Mag. (Notes of Cases), 117.* £5000

316. In a case of meritorious salvage of a derelict by a smack, two luggers, an officer and ten men of the coast guard, a moiety of the value (1300*l.*) having been decreed as salvage, was apportioned by the Court as follows:—

\* 67. This Order has been repealed by the Order in Council of 19th of March, 1834, which has since

also been repealed: see the Proclamation now in force, printed in the Appendix.

|  |              |
|--|--------------|
|  | £            |
| To the smack - - - -   | 650          |
| To the luggers - - - -   | 325          |
| To the coast guard, the officer<br>(a lieutenant) taking half<br>thereof - - - - | 325          |
| <i>The Helen, Breckwoldt, 3</i><br><i>Hagg. 430. n.</i>                          | <u>£1300</u> |

317. A vessel postponed her homeward voyage in search of freight, and at the request of the master of a vessel wrecked went out of port to the wreck, about 500 miles distant, in the Chinese Seas, where, with great risk and exertion for several days, she saved valuable property; and being afterwards compelled by bad weather to put back to the same port, there sold the same by auction, transmitting the proceeds to the Court of Admiralty to abide its award; the Court having awarded a moiety (about 1360*l.*) as salvage in respect of such services, apportioned the same as follows:—

|                      |              |
|----------------------|--------------|
| To the owners - - -  | One half.    |
| To the captain - - - | One quarter. |
| To the mate - - -    | £50 extra.   |

The remainder among the crew, including the mate, in proportion to their wages.  
*The Martha, Viner, Ibid. 434.*

318. In a case of long and laborious salvage of a derelict found in a disabled state off Newfoundland, and brought by the salvors to Plymouth, a tender of 1600*l.* for salvage having been made and accepted, the Court apportioned the amount as follows:—

|   |       |
|---|-------|
| To the owners of the salving vessel - - - -   | £ 700 |
| To the master - - - -   | 200   |
| To the mate - - - -   | 200   |
| To five of the crew, who, with the mate, navigated the derelict from Newfoundland to Plymouth - - - - | 300   |
| To the rest of the crew, who remained on board the salving vessel - - - -                             | 200   |

*The Deveron, 1 W. Rob.*  
180. £1600

319. A moiety of the nett value (subject to deductions) of a derelict having been awarded to salvors who brought the vessel to this country but could not bring her into port, the Court allowed the expenses of bringing the vessel into port as a deduction from the nett value, and apportioned the balance of such moiety as follows:— Three fourths among the salvors, of whom there were seven, the chief

salvor taking a double share, and they bearing their own costs; and of the remaining one fourth a moiety to the owners of the vessel to which the salvors belonged, in consequence of their having been deprived of the salvors' services whilst engaged in the salvage service, they paying their own costs thereout; and the remaining moiety among the rest of the crew of the vessel to which the salvors belonged.  
*The Watt, 2 W. Rob. 71.*

320. In a case of derelict, in which 800*l.* was paid by agreement for salvage, on a question of apportionment preferred on behalf of four of the crew of the salving vessel not engaged in the salvage, (which was effected by the rest of the crew, *viz.* the mate and one seaman, assisted by four others, and afterwards by some pilots,) the Court awarded

|   |     |
|---|-----|
| To two of the seamen £50 each -                     | 100 |
| To the other two, being apprentices, £20 each - - - | 40  |

*The Sarah Jane, Ibid. 119.* £140

321. A derelict was found drifting in the Irish Channel with between two and three feet water in her hold, and brought into Holyhead by three salvors, being part of a crew of six persons belonging to a small schooner, which discovered the derelict, and afterwards accompanied her back to Holyhead; the Court having awarded 1800*l.* as salvage, apportioned it as follows:—

|   |     |
|---|-----|
| To the owners of the schooner, for the risk incurred by her being insufficiently navigated, from the absence of the salvors, and for the loss of freight agreed to be paid on her return voyage, lost through the salvage service - - - | 600 |
| To the master - - -   | 400 |
| To the mate - - -   | 250 |
| To the four seamen - - -  | 550 |

*The Carolina, Ibid. 124.* £1800

322. A derelict having been discovered at sea about ninety miles N. W. of the Scilly Isles by a West Indiaman, with a valuable cargo, homeward bound, the master of which put his chief mate and three of his men on board, who brought her with difficulty to Milford Haven. The Court having awarded 550*l.* as salvage, apportioned the same as follows:—



|   |      |
|---|------|
|   | £    |
| To the owners of ship and cargo                       | 100  |
| To the master - - -                                   | 100  |
| To the chief mate - - -                               | 100  |
| To the three men who went on board the derelict - - - | 150  |
| To the remainder of the crew -                        | 100  |
| <i>The Nicolina</i> , Ibid. 175.                      | £550 |

5. Among officers and crews of coast guard cruisers and stations.\*

6. Where the salving ships were steam-vessels.

323. A salvage reward of 2000*l.* apportioned by the Court as follows:—

|  |       |
|--|-------|
|  | £     |
| To the owners of the salving vessel, a steamer - - -   | 1000  |
| To the master - - -  | 500   |
| The remainder in twenty-one shares amongst the crew, according to their respective wages - - - | 500   |
| <i>The Howard</i> , 3 Hagg. 256.   | £2000 |

n. (a).

324. In the apportionment of a sum of 900*l.* awarded as salvage for towage by a large steamer, value 12,000*l.*, which had been put in some risk, the Court allotted

|   |     |
|---|-----|
|   | £   |
| To the owners - - -   | 450 |
| To the master, on account of his responsibility in undertaking the salvage - - -  | 50  |
| Among the officers and crew in proportion to their respective weekly wages, the master sharing <i>pro rata</i> , exclusively of the 50 <i>l.</i> specially allotted to him, the remaining - - - | 400 |

*The Earl Grey*, Topham, Ibid. 364. £900

7. Shares of apprentices and boys.

325. The allotment of a salvage reward is for personal merit, and no person is entitled to interfere with that reward. The claim of a master to the share of an apprentice rejected. *The Two Friends*, 8 Jur. 1011.

326. A claim of the owners of the salving vessel to the shares of the apprentices who were on board overruled, the Court holding that, even if a previous contract to that effect had been made, it would be void as against equity and public policy; but in the apportionment of a salvage remuneration the nature of the apprentices' connection with the vessel is to be taken into reasonable consideration, and, to a certain

\* 68. Rewards of all kinds, and *semble* for salvage services (except head-money on the capture of smugglers), are to be distributed to the officers and crews of coast guard cruisers and stations agreeably to the following scheme:—

| Cruisers.                         |            |
|-----------------------------------|------------|
| Commanders - - -                  | 100 shares |
| Chief mates - - -                 | 45 —       |
| Second ditto - - -                | 35 —       |
| Deputed mariners and pilots - - - | 20 — each  |
| Mariners - - -                    | 10 — —     |
| Ordinary mariners - - -           | 7 — —      |
| Boys and supernumeraries - - -    | 5 — —      |

| Stations.   |        |
|---|--------|
| Chief officers - - -                                      | 25 —   |
| Chief boatmen and sergeants of mounted guard - - -        | 10 — — |
| Commissioned boatmen and corporals of mounted guard - - - | 8 — —  |
| Boatmen, privates of mounted guard, and extra men - - -   | 6 — —  |

Where officers and men belonging to revenue cruisers are temporarily employed in aid of the force on shore, rewards are to be distributed agreeably to the following scheme:—

|   |                |
|---|----------------|
| Commanders of cruisers and chief officers - - - | 25 shares each |
| Chief mates - - -                               | 15 — —         |

|  |                |
|--|----------------|
| Second mates of cruisers, chief boatmen, and sergeants of mounted guard - - -            | 10 shares each |
| Deputed mariners of cruisers, commissioned boatmen, and corporals of mounted guard - - - | 8 — —          |
| Boatmen, mariners, privates of mounted guard, and extra men - - -                        | 6 — —          |
| Ordinary mariners - - -  | 5 — —          |
| Boys - - -   | 2 — —          |

*General Instructions to the Coast Guard of the United Kingdom*, issued by the Comptroller General, anno 1841, art. 11. ss. 23, 24.

69. Persons acting in superior situations will, on producing the Comptroller General's or inspecting commander's order, be entitled to the proportion of rewards for seizures allotted to the superior rank. *Ibid.* s. 28.

70. No distribution of any reward for salvage among officers and crews of cruisers and coast guard stations is to take place until a list showing the amount and the proposed distribution thereof has been approved of by the Comptroller General, and the amount required to make good any damage sustained by any cruiser, or cruiser's or coast guard boat, as well as the value of any stores lost or injured in rendering the assistance, is to be stated in such list in order to its being deducted from the salvage award. *Ibid.* art. 30. s. 7.

extent, the owner should be benefited from that source. *The Columbine*, 2 W. Rob. 186.

327. A boy held entitled to share equally with seamen in a salvage remuneration, the Court presuming (his age not being stated) that he performed the same amount of duty as the other seamen. *The Caroline*, 7 Jur. 660.

#### 8. Sundry cases of—\*

328. A salvage award of 1200*l.* to the owners, master, and crew of a South Sea whaler for services rendered to a homeward bound West Indianman apportioned by the Court as follows:—

|   | £     |
|---|-------|
| To the owners of the salving vessel, which was not endangered by the service but had been much detained thereby, in consequence of which the owners had incurred risk and expenses for repairs, damage, towage, demurrage, &c. amounting to 350 <i>l.</i> , the sum (including all expenses) of - | 700   |
| To the master, who, with five of the crew, put off in his boat to the assistance of the vessel at great risk and danger -   | 200   |
| To the five men, the boat's crew, 100   |       |
| And to the remaining crew (twenty-seven men), to be distributed according to their respective interests in the profits of the voyage -  | 200   |
| <i>The Jane, Hudson</i> , 2 Hagg. 338.  | £1200 |

329. In a case of very meritorious salvage, attended with great danger and loss of three lives, effected by eight smacks manned with thirty-two men, the salvage award (1300*l.*) was distributed as follows:—

|   | £    |
|---|------|
| To each of the smacks, 150 <i>l.</i> -                          | 1200 |
| To the family or representatives of a master of one of the ves- |      |

|  |    |
|--|----|
| sels, who lost his life in the service - - - -                           | 50 |
| To the families of the two others who also perished, 25 <i>l.</i> each - | 50 |

*The Marquis of Huntley, Molisson*, 3 Hagg. 246. £1300

330. On application for a specific apportionment of 1000*l.*, awarded as salvage to the owner and crew of a smack, the Court stated that there was no precise rule in such a matter, but that if counsel could agree upon a scheme of apportionment it should be made a rule of Court. The following scale was accordingly adopted:—

|  | £     |
|--|-------|
| To the owner, the vessel having been much strained and not being insurable, except at a very high rate, (she being licensed for fishing and salvage,) her value being 1200 <i>l.</i> - | 350   |
| To the master - - - -  | 230   |
| To the mate - - - -  | 120   |
| To three seamen, 90 <i>l.</i> each -   | 270   |
| To three boys, 10 <i>l.</i> each -   | 30    |
| <i>The Albion, Turnbull</i> , Ibid. 256.   | £1000 |

331. A similar rate of apportionment of 1000*l.* amongst the owners and crew of another smack adopted. *Ibid.* n. (a).

332. A similar rate of apportionment of 1000*l.* salvage among the owners and crew of a schooner adopted. *The Defiance*, Ibid. 256. n. (c).

333. A pilot and six men went, at the risk of their lives, out of Portsmouth Harbour, before the storm had abated, to a vessel in distress, dismasted, without anchors, and bumping on the shore, and piloted her into Portsmouth Harbour, the services not being (after reaching the vessel) of great difficulty or long duration. The Court, having awarded 84*l.* as salvage, apportioned it as follows:—

|   | £   |
|---|-----|
| To the pilot, twenty guineas -              | 21  |
| To each of the boatmen, ten guineas - - - - | 63  |
| <i>The Nicolaas, Witzén</i> , Ibid. 969.    | £84 |

\* 71. As between the master and the officers, the usual course has been to allow the master a larger proportion than the mate, and commonly twice as much; but the rule in this, as in other cases, yields to circumstances of a peculiar nature. *The Henry Eubank and cargo*, 1 Sumner's (AMERICAN) Rep. 400.

72. One hundred and thirty pounds having been awarded as salvage to a fishing smack of fifty-five

tons and eight men, the Court, on application to it for the purpose, apportioned the same as follows:—

|   | £    |
|---|------|
| To the owners - - - -   | 45   |
| The remainder to the master and crew -  | 85   |
| <i>The Catherina Anna Helena</i> (1839), 5 Monthly Law Mag. (Notes of Cases), 44. | £130 |

334. A salvage award of 1800*l.* apportioned by the Court as follows:—

|   | £    |
|---|------|
| To the owner - - -  | 600  |
| To the master - - -   | 400  |
| To the mate - - -   | 250  |
| To three seamen and a boy, being the remainder of the crew, sharing equally - - -   | 550  |
| The age of the boy not being stated, the Court held that it must presume he performed the same amount of duty as the seamen, and refused to make any difference between them. <i>The Caroline</i> , 7 Jur. 660. | 1800 |

335. A salvage award apportioned by the Court between the owners and crews of three fishing smacks as follows:—

|                                   | £    | s. | d. |
|-----------------------------------|------|----|----|
| To the owners - - -               | 480  | 7  | 6  |
| To the three masters - - -        | 205  | 17 | 6  |
| To the three mates - - -          | 102  | 18 | 9  |
| To the five seamen - - -          | 171  | 11 | 3  |
| To the thirteen apprentices - - - | 137  | 5  | 0  |
| <i>The Louisa</i> , 2 W. Rob. 26. | 1098 | 0  | 0  |

336. An award of salvage of 383*l.* 11*s.* 6*d.* to a fishing smack apportioned as follows:—

|  | £   | s. | d. |
|--|-----|----|----|
| To the owners - - -  | 134 | 4  | 6  |
| To the master - - -  | 74  | 11 | 5  |
| To the mate - - -  | 41  | 0  | 0  |
| The remainder amongst the crew according to the rate of their respective wages - - - | 133 | 15 | 7  |
| <i>The Britain, Allison</i> , 1 W. Rob. 45.  | 383 | 11 | 6  |

337. A tender of 600*l.* having been accepted by salvors, the owners and crews of two smacks, and an agreement entered into between them to divide the sum equally between both vessels, the Court, on a question of apportionment between the respective owners and crews, allotted the salvage as follows:—

| <i>To the first smack.</i>                     |   | £   |
|--|---|-----|
| To the master - - -                            | - | 50  |
| To the two men - - -                           | - | 80  |
| Extra to one of them, a principal salvor - - - | - | 20  |
| To the two apprentices - - -                   | - | 40  |
| To the owners - - -                            | - | 110 |
|  |   | 300 |

*To the second smack.*

|                                | £   |
|--------------------------------|-----|
| To the master - - -            | 60  |
| To the mate - - -              | 50  |
| To the three apprentices - - - | 60  |
| To the owners - - -            | 130 |

*The Columbine*, 2 W. Rob. 186. £300

338. The captain of a salvor, who effected the salvage by putting part of his crew on board the vessel salvaged, but did not himself go on board her, awarded 100*l.* as a sort of flag eighth out of 800*l.* decreed for the salvage. *The Baltimore, Baker*, 2 Dodson, 136.

339. The mate of a salvor placed in the chief command of the vessel salvaged (a derelict), with part of the crew of the salvor, awarded 80*l.* out of 800*l.* awarded as salvage. *Ibid.* 137.

340. In a case of salvage effected by a King's ship and crew, one tenth of the value of ship, cargo, and freight, having been awarded, the Court directed the same to be distributed according to the prize proclamation then in force. *The Mary Ann, Ferrier*, 1 Hagg. 158.

341. The proportion of salvage due to the Admiral of the station, who had contributed effective salvage assistance, beyond the performance of his mere official duties, settled by the Court according to the proportions laid down in the prize proclamation. *The Thetis*, 3 Hagg. 61., 2 Knapp. 409.

See *antè*, Nos. 86. 200. 236. 245. 255. 288. 291.

See SALVAGE (Military), cap. VIII.

## XV. OF THE LIABILITY TO THE PAYMENT OF—

### 1. Of the East India Company.

342. The East India Company are not exempt from the payment of salvage to a ship in their employ for services rendered to a ship belonging to them. *The Waterloo, Birch*, 2 Dodson, 433.

### 2. Of freight.

343. On salvage of cargo, the freight thereon, as well as the cargo itself, is liable to salvage. The freight is not to be deducted, but to be added to the cargo, in estimating the value in respect of which the salvage remuneration is to be allotted. *The Westminster*, 1 W. Rob. 233.

See *post*, notes 78. 82.

## XVI. OF THE PAYMENT OF — \*

344. By 9 & 10 *Vict. c. 99. s. 25.* whenever any sum to be paid for any salvage services, either voluntarily or in consequence of any agreement or arbitration, or of any award of Justices and Commissioners of Salvage under this act, or within the jurisdiction of the Cinque Ports by any Commissioners, shall be distributable between two or more persons, such sum shall be paid to such persons as shall be appointed by the Justices or Commissioners in their award, or by the arbitrator making any award, or under any agreement; or in default of any such appointment, to the master or owner of the ship or boat having rendered the services, or his agent, or to some person nominated in writing by or on behalf of the majority of the salvors; and every such appointee shall, within three days after payment, or as soon after as may be, proceed to make allotment thereof among the persons interested, and to give notice, in the form contained in schedule B., to each person, of the whole sum so paid, and of the share thereof allotted to him; and within thirty days after the sum shall have been so paid, or within twenty-eight days after such notice shall have been given, and not afterwards, any person claiming a share of the sum, and thinking himself aggrieved by no allotment having been made, or notice thereof given to him within ten days after the payment of the sum, or by the insufficiency of the share allotted to him, or otherwise, may apply, if the share allotted or claimed by him be under 20*l.* to the Justices or Commissioners who may have determined the salvage, or within whose jurisdiction the salvage may have occurred, who shall have full power to adjudge the due distribution of the sum so paid, and the shares of the different parties entitled thereto, which shares may then be recovered from such appointee, like any penalty under this act;

and if such share shall amount to 20*l.*, the person entitled to or claiming the same may, within the said term of thirty days or twenty-eight days, but not afterwards, apply to the Judge of the High Court of Admiralty, or his surrogate, for a monition against such appointee, to bring the same, or any part thereof which shall appear not to have been distributed, into the registry of the said Court, and appear in and abide the judgment of the said Court concerning the distribution thereof; and the Judge, or his surrogate, shall, on due cause shown, issue such monition; and the said Court shall have jurisdiction to enforce the same, and to adjudge the due distribution of such sum accordingly; and in the case of an award, the person by whom such award shall have been made shall, on monition, send in without delay to the said Court a copy of the proceedings before him, and of the award, on unstamped paper, witnessed under his hand; and the same shall be admitted by the Court as evidence in the cause; and the amount so awarded, or such part as shall appear not to have been duly distributed, shall be paid to the parties suing out such monition, or distributed according to the judgment of the Court.†

345. By *s. 24.* after any award has been made, as directed by this act, by the Justices or their nominee, or the Commissioners of Salvage, and the owner of the property saved, or his agent, shall refuse or neglect to pay the same, or to give notice of appeal to the High Court of Admiralty, or to take out a monition therein, the neighbouring receiver shall, within twenty days after the making of the award, and on production of the same, sell the property contained in the ship saved, or the goods or other articles saved or recovered, as the case may be, or so much thereof as in his opinion will be sufficient to defray salvage and expenses, paying the surplus, if any, to the owners thereof.‡

346. By *s. 11.* on salvage of any articles of wreck, goods jetsam, flotsam,

\* 73. *Semble*, that a claim for salvage would take precedence of wages earned prior to the salvage services being rendered. *The Selina*, 2 Notes of Cases, 18.

† 74. Prior to the above stat. a motion for a monition against the owner of a salving vessel, who had received a specific sum for salvage, under an agreement made by the master of the salving vessel and purporting to bind him and the crew, but which had been held not to be conclusive against the crew, who had not received any share of such amount and had been awarded salvage by the

Court which had since been paid, to bring such sum into the registry, or so much thereof as had been repaid to the crew, rejected as not within the jurisdiction of the Court. *The Britain*, *Allison*, 1 W. Rob. 45. n.

‡ 75. In the following cases, a sale of cargo duty free to defray the salvage was made under 1 & 2 Geo. 4. c. 75. *The Augusta*, *Lovell*, 1 Hagg. 21. n.; *The Jonge Nicolaas*, *Parma*, *Ibid.* 201. 209. But such sales are now no longer allowed; see 4 & 5 W. 4. c. 89. s. 4.

lagan, or derelict, &c., not exceeding 5*l.* in value, the receiver may sell the same forthwith, and pay the salvage due thereon, but the salvor shall not be entitled to more than one third of the nett produce of such sale.

347. By *s.* 13. when it shall happen that on the sale of articles as therein-before directed, the proceeds shall, after payment of the expenses, be insufficient to defray the salvage, the receiver may send a report stating the circumstances to the Receiver General; and the Commissioners of the Treasury, on receiving an application thereupon from the Receiver General, are authorized to allow such sum as they shall deem sufficient to be paid out of the Exchequer by way of salvage.

348. By 7 & 8 *Vict. c.* 112. *s.* 12. no assignment or sale of salvage made prior to the accruing thereof, nor any power of attorney expressed to be irrevocable, for the receipt of such salvage shall be valid.

*See antè, Nos. 73, 74.*

## XVII. PRACTICE IN CAUSES OF —

### 1. Generally.

349. The Court is not limited to any particular demand of the salvors in cases of great merit, nor to the amount for which the salvors had entered their action in the first instance. *The Jonge Bastiaan, Steyting*, 5 C. Rob. 322.

350. In cases conducted by act on petition and affidavits, the tests for ascertaining the truth are neither so many nor so effective as where the proceedings are by plea and proof, but they are generally sufficient in cases of salvage, which require discreet settlement rather than precise adjudication. *The Towan*, 8 Jur. 221.

351. The Court reprehended the delay in not entering an action for salvage until eight months after the service had been effected. *The Clifton, Lightbody*, 3 Hagg. 117. (*See antè, No. 136.*)

352. In a salvage case, in which the claim of the asserted salvors had been pronounced against, but without costs, motion to condemn them in the expenses of possession of the vessel, which had remained in the custody of the Marshall during the cause, the parties not being able to agree the value, rejected. The Court intimated that had the owners given in their affidavit of value, and applied for a supersedeas, and the vessel had then been detained by the asserted salvors, it would have granted the motion. *The India*, 1 W. Rob. 410.

*See antè, Note 23., No. 114.*

### 2. On appeals from awards of commissioners and magistrates.\*

353. On an appeal from an award of salvage new matter should not be introduced without the special leave of the Court. *The General Palmer, Thomas*, 2 Hagg. 323. n.

354. On an appeal from an award of magistrates in a salvage case, affidavits disclosing facts not put in evidence before the magistrates refused to be received. Award confirmed, but without costs. *The Osiris, Shaken*, *Ibid.* 135.

355. On appeals from the awards of magistrates, parties may, at their own discretion, and without special application to the Court, bring in an act on petition and affidavits, but at the imminent peril of costs if such further proceedings shall ultimately appear to have been introduced without sufficient cause. *The Thomas Wood, Wright*, 1 W. Rob. 18.

356. Motion of the appellants (the owners) to postpone the hearing of an appeal from an award of salvage by magistrates prosecuted by them against first salvors, until a suit for the same salvage brought by second salvors, no parties to the proceedings before the magistrates, was ripe for hearing, rejected. *The Eugene, Bourne*, 3 Hagg. 157.

\* 76. In a case of salvage for carrying out two anchors with appropriate chain cable from Dover to a vessel off Hythe, and in which an award was made by the Commissioners of Cinque Ports, which was appealed to the Court of Admiralty, the merchant who supplied the anchors and cable appeared for the owners before the Commissioners, but his agency was on the appeal repudiated by them, as having been undertaken without their instructions: *Held*, that the facts did not disclose any authority to him to act as agent. *The Lord Goderich* (1841), 10 Monthly Law Mag. (Notes of Cases), 217.

77. On an appeal by the owners from an award of

salvage by the Commissioners of Cinque Ports, an objection to the jurisdiction of the Commissioners on the ground that no person was present before them authorized to represent the owner, as required by the stat. 1 & 2 *Geo. 4. c.* 76., raised by the owners in the Court of Admiralty, but not until the hearing and after they had prayed to be allowed to exhibit further proofs on the express ground of the owners not having been so represented, and subsequently for a reversal of the award, *Held*, not to have been properly raised, and the objection overruled accordingly. *The David Luckie* (1840), 9 Monthly Law Mag. (Notes of Cases), 205.

357. A certificate of valuation by magistrates in salvage cases, under 1 & 2 Geo. 4. c. 75., if not conclusive, is of great weight. *The Brothers, Stewart*, 2 Hagg. 197.

*See antè, Nos. 16. 18. 344., and Note 12.*

### 3. As to separate actions by the salvors.

358. In a case of salvage of a derelict, separate actions having been entered by the actual salvors, and by the owners, master, and remainder of the crew of the salving vessel, the Court awarded half costs only, expressing its regret that separate appearances had been given. *The Nicolina*, 2 W. Rob. 175.

*See antè, No. 80.*

### 4. As to consolidation of actions.

359. In two actions for salvage by separate salvors, actions consolidated. *The London Merchant, Laker*, 3 Hagg. 395.

360. In two actions for salvage by two portions of the salvors in respect of the same service, actions consolidated. *The Hope, Norman*, Ibid. 423.

### 5. As to the production of protests, and the effect thereof.

361. In a salvage suit the protest made, *recenti facto*, on behalf of the vessel salvaged is always an important document. A protest, certified by the notary to be a true copy of the entry of protest made before him, but not sworn or extended, permitted to be read. *The London Merchant, Laker*, 3 Hagg. 396.

362. Protests ought invariably to be produced in all cases, whether of salvage or damage. *The Emma*, 8 Jur. 651., 2 W. Rob. 316., 3 Notes of Cases, 114.

363. In salvage cases a protest for cer-

tain purposes is of very great importance. The purpose of a protest is with a view of substantiating claims against the underwriters; and with that view it is necessary that it should show what damage the vessel has sustained, and what occasioned that damage. It must also set forth the circumstances which justify and require the employment of salvors, as demands are to be made against the underwriters. It is of great importance towards the administration of justice in the Court of Admiralty that the protest should contain a full statement of these facts, as the protest is made against the underwriters in the light of adverse parties. Those who make a protest, if they mean to recover for the damage and expenses incurred, must not understate the damage, or undervalue the services rendered; and it operates, therefore, as a check upon the statements made on behalf of the vessel to which assistance has been given; but it cannot be referred to as containing a full statement of all the facts as they relate to the salvors. *The Diamond*, 9 Jur. 694.

### 6. As to references to the registrar and merchants.

364. Reference decreed to the registrar and merchants of the accounts of a party appointed agent by the master, and claiming also as salvor in that capacity. *The Happy Return, Woolcock*, 2 Hagg. 207.

365. Loss and damage of salvors attending a salvage service referred to the registrar and merchants to examine and report upon. *The Oscar, Lofgren*, Ibid. 261.; *The Salacia, Garland*, Ibid. 269.

*See antè, No. 15.*

### 7. In estimating the value of the property salvaged.\*

366. *Semble* that salvage remuneration

\* 78. In all cases of salvage, those who conduct the service are entitled to have the value of the whole property stated, that is, the ship, freight, and cargo. Where the freight is included in the cargo they have it *de facto*, though not in the same manner as where the freight is considered as a distinct item. *The Charlotte, Wylie*, 5 Notes of Cases, 6.

79. In a case of salvage the Court, in estimating the value of the property salvaged with reference to the apportionment of salvage, *Held* a bottomry bond given subsequently to the salvage, and wages accruing during the same time, to be legitimate deductions from the value of the property salvaged, but not the wages earned prior to the salvage. *The Selina*, 2 Notes of Cases, 18.

80. The valuation of a recaptured ship in order to ascertain the rate of salvage, may be determined

by the policy of insurance, if there be no reason to suspect she is undervalued, and the same rule may be observed as to goods where there are policies upon them; if that, however, should not be the case, the salvors have a right to insist upon proof of the real value, which may be given by the production of the merchant's invoices. 1 *Park on Ins.* 327., *Beaue's Lex Merc.* 147.

81. The wearing apparel of the master and seamen is excepted from the allowance of salvage. *Ibid.*

82. In a question as to the value of a ship and cargo salvaged, the owners of the cargo claimed a deduction of 590l. for freight, primage, and insurance, *Held*, 1st, with regard to the freight, that if it were to be deducted from the value of the cargo it must be taken afterwards as a separate

is to be calculated on the value of the ship and cargo, without any previous deduction for wages due at the time when the salvage service was rendered. *The Sahira*, 7 Jur. 182.

See *antè*, No. 343.

See UNLIVERY AND APPRAISEMENT.

#### 8. *Miscellanea*.\*

367. Where property, whether in the Prize or Instance Court, in a case of capture or salvage is delivered on bail to the claimant, he is bound, on the one hand by the appraised value, and cannot be called upon, on the other hand, to bring in more than the appraised value. *The Betsey*, *Winpenny*, 5 C. Rob. 295.; *The Jonge Bastiaan*, *Steyting*, *Ibid.* 322. So, too, he cannot be allowed expenses attending the property after it is delivered to him on bail. *The Betsey*, *Winpenny*, *Ibid.* 295.

#### XVIII. COSTS IN CAUSES OF —†

368. An award of magistrates in a salvage case having been reversed on appeal, costs of respondents in the appeal refused. *The Henry of Philadelphia*, *Palesti*, 1 Hagg. 264.

369. In a claim of asserted salvage pronounced against, the Court, considering the case as one of experiment, inclined rather to give costs, but ultimately declined doing so, in consequence of the asserted salvor being a bankrupt. *The Zephyr*, *Arrowsmith*, 2 Hagg. 48.

See *antè*, Nos. 57. 62, 63.

66. 80. 121. 129. 150. 189.,  
Note 59., and No. 227.

In cases of tender — see  
TENDERS.

item upon which salvage would be decreed, and no dispute being raised between the owners of the ship and the cargo, the item could not be allowed; 2d, with regard to primage, that it had never been considered as a deduction; and 3d, with regard to insurance, that it could on no account be allowed. Claim of deduction overruled accordingly. *The Charlotte*, *Wyke*, 5 Notes of Cases, 6.

\* 83. In a suit for salvage, which had been instituted in the name of the owners and others of the asserted salving vessel, and in which suit the asserted salvors had been condemned in costs, a motion for payment of costs having been served on such owner, an application for an attachment against him for disobedience thereto, opposed by the owner, alleging that the suit had been instituted without his authority, acquiescence, or

privity, rejected, and the owner dismissed. *The Wilhelmine*, 2 Notes of Cases, 19.

84. Salvors are *ex necessitate* admitted as witnesses to all facts which are deemed peculiarly or exclusively within their knowledge. To other facts they are incompetent. *The Henry Ewbank and Cargo*, 1 Sumner's (AMERICAN) Reports, 400.

† 85. Where the judgment of Commissioners of Cinque Ports, or of magistrates allotting salvage, is reversed in part on appeal, the Court will not generally give costs. Costs refused in such a case. *The David Luckie* (1840), 9 Monthly Law Mag. (Notes of Cases), 212.; *The Thomas and William* (1841), 10 *Ibid.* 215. And *semble*, notwithstanding the Court at the same time pronounces against a tender made by the appellants in lieu of the award. *The Lord Goderich* (1841), *Ibid.* 217.

## SALVAGE (MILITARY).

## I. GENERAL CONSIDERATIONS AS TO —, 400.

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CASES OF —, 400.

## III. WHO MAY BE SALVORS — ET CONTRA, 401.

## IV. WHAT SERVICES WILL CONFER A RIGHT TO — ET CONTRA, 401.

## V. OF THE RIGHTS OF SALVORS, 402.

1. Generally, 402.
2. Owners of salvaging vessels, 402.
3. Where barred — et contra, 402.

## VI. OF JOINT SALVORS, 403.

## VII. AWARDS OF —, 403.

1. Under the general Maritime Law, 403.
2. Under the provisions of the Prize Acts, 404.
  - (a) What vessels entitled to the higher rate of salvage, 404.
  - (b) What vessels entitled to the lower rate of salvage, 404.

## VIII. OF THE APPORTIONMENT OF —, 404.

## IX. OF THE LIABILITY OF RECAPTURED PROPERTY TO THE PAYMENT OF —, 405.

1. Of neutral property as subject to condemnation in the Courts of the captor's country — et contra, 405.

2. Of neutral property on board British armed ships, 406.

3. Of neutral property under treaties with this country, 406.

4. Of vessels restored to former owners, by reason of their having been purchased under illegal condemnations, 406.

5. Of property of an allied sovereign, 406.

6. Of Government property, 406.

7. Of other property, 406.

8. Where the property was lost from accident pending adjudication, 406.

9. Of freight, 407.

10. As between owners and charterers, 407.

## X. PRACTICE IN CASES OF —, 408.

1. Requisites of proof, 408.
2. Value of property salvaged, how to be estimated, 408.

See SALVAGE (Mixed).

## I. GENERAL CONSIDERATIONS AS TO —\*

1. It was always settled law in the Court of Admiralty that of common right salvage on recapture was due to the recaptors, although the *quantum* of salvage fluctuated (amounting sometimes to as much as one half of the value) until settled at an eighth by the Prize Acts. *The Dickenson*, *Merton*, *Hay & Marriott*, 48.; *The Betsey*, *Ibid.* 81, 82. (But see *post*, Nos. 57. to 65.)

2. It is not necessary, to found a claim for salvage on recapture, to show that it was primarily the intention of the captor to recover the property. If the recovery of the property be the immediate and necessary result of what he has done, he will be entitled to salvage. *The Progress*, *Barker*, *Edwards*, 211.

3. A King's ship is entitled to civil salvage for services rendered to a vessel in distress in addition to military salvage for her recapture from the enemy. *The Louisa*, *Higginbotham*, 1 *Dodson*, 317.

4. Salvage on recapture is a question *juris gentium*; so likewise is civil salvage, in which the *quantum meruit* is the only rule in apportioning the remuneration. *The Johann*, *Friederich*, 1 *W. Rob.* 38.  
*See post*, No. 46.

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN CASES OF —

5. An American ship was taken by the French on a voyage from Philadelphia to London, and afterwards rescued by her crew, part of whom were Englishmen and claimed salvage on the recapture in the High Court of Admiralty, libelling the vessel and cargo after her arrival in England. *Held* that the jurisdiction of the Court over the case was well founded, and that the parties had a right to resort to it; and also that the circumstance of the ship and cargo being American property would not exclude the jurisdiction where there were British subjects concerned and where

\* 1. The payment of salvage on recapture is analogous to the payment of ransom. *Abb. Sh.* 640.



the property was within the jurisdiction of the Court. *The Two Friends, McDougal*, 1 C. Rob. 271.

6. *Semble*, that if the salvors had been Americans no inconvenience would arise if a British Court were to hold plea of such a case, or conversely if American Courts were to hold pleas of this nature respecting the merits of British seamen on such occasions, for salvage is a question of the *jus gentium*, and materially different from the question of a mariner's contract. *Ibid.*

7. The jurisdiction of the Court of Admiralty over the case *Held* not to be ousted by the landing of part of the goods, for they were goods taken on the high seas *jure belli* out of the hands of the enemy, and the process of the Prize Court would therefore follow such goods anywhere. *Ibid.*

8. Salvage awarded to an American vessel for recapture of an English vessel from the French, no opposition being made to the jurisdiction of the Court. The case not being one of any great merit, one sixth allotted. *The Good Intent, Humphries*, *Ibid.* 286. n.

### III. WHO MAY BE SALVORS—ET CONTRA.

9. No letters of marque are required to enable a vessel to make a recapture or to entitle her to a salvage interest therein. A recapture is not made at all under that authority. *The Helen, Marshall*, 3 C. Rob. 228.

10. A non-commissioned vessel is fully competent to assert an interest in salvage on recapture, and this practice is fully confirmed by the words of the Prize Act. *The Urania, Walker*, 5 C. Rob. 148.

11. On principle persons not in any military capacity but merely acting as private individuals, if they happen by any successful effort to rescue maritime property from the enemy, would be entitled to salvage. *The Progress, Barker, Edwards*, 215.

12. Salvage on recapture decreed to a non-commissioned captor. *The Hope, Hay & Marriott*, 216.

13. It is not part of the general duty of the crew as seamen, in cases of capture, to effect a salvage service by rescuing the vessel. It is a meritorious act and perfectly voluntary, in which each individual is a volunteer and is not acting as part of the crew of the ship in discharge of any official duty, either ordinary or extraordi-

nary. *The Two Friends, McDougal*, 1 C. Rob. 271.

14. Persons put on board a cartel with their own consent by the government of the enemy to be carried to their own country, are bound to do no act of hostility. Therefore a capture made by such persons of a vessel of their own country from the enemy is not a recapture in contemplation of law, and gives them no title to salvage, and the former owner no title to claim the vessel. Property so recovered decreed to be given up to the disposal of the Crown. *The Mary, Folger*, 5 C. Rob. 200.

15. It is not incompetent to an army to make a claim for salvage on recapture of maritime property in a maritime town recovered by its efforts directed to that purpose, but it must be shown that the liberation of the property was an immediate and direct consequence of military operations directed in the vicinity and with a view to that object. *The Progress, Barker, Edwards*, 214.

16. In the case of donation from an enemy captor to the original owner the vessel must be condemned as a droit of Admiralty, and the donee can acquire no interest except as salvor or from the liberality of the Crown. *The Santa Cruz, Picoa*, 1 C. Rob. 76.

*Convoying ships*—see CONVOY, cap. IV.

### IV. WHAT SERVICES WILL CONFER A RIGHT TO—ET CONTRA.

17. An American ship was taken by a privateer A., who kept possession ten days, when the prize was retaken by an American cruiser B., who kept possession thirteen days. It was then again recaptured by a British cruiser C., at the time of whose recapture of her the prize master and crew of A., the first captor, were on board the prize. A. having been *held* to be the actual captor, and C. the recaptor, salvage awarded to the recaptor equivalent to the share of a joint-captor. *The Lucretia, Hay & Marriott*, 227.

18. Claim for military salvage, as for a recapture, for preventing a vessel in distress from going into a port of the enemy to save the lives of the crew, rejected, the Court intimating that in no case had military salvage been given where the property was not in the possession of the enemy, or so nearly so as to be certainly and inevitably within his grasp. *The Franklin, Good-*

rich, 4 C. Rob. 147., and *El Navarro*, therein cited.\*

19. Where an English cruiser finding enemy property on board a neutral vessel put two men on board, and the neutral master voluntarily promised to go into a British port without more force being put upon him, *Held* that the seizure under such circumstances was sufficient in law to constitute a capture against the claim of another British cruiser, who afterwards made another seizure on finding the neutral master proceeding into an enemy port. This last seizure, however, under the circumstances of the case, and on the admission of the first seizors that they applied to the second for assistance on finding the neutral master going into an enemy port, *Held* to give the second seizors a claim to salvage; 200*l.* and expenses accordingly awarded as salvage on a value of 1100*l.* *The Resolution*, *Shapleigh*, 6 C. Rob. 13.

20. Salvage on recapture is not due to a native army for rescuing water-borne property in a seaport town of its own country from the possession of the enemy, nor to allies co-operating with the native army in such recapture. Claim of a British army for recapture of Portuguese property at Oporto in conjoint operations with the Portuguese army rejected. *The Progress*, *Barker*, Edwards, 219.

21. Claim of a British army for salvage on recapture of British ships and cargoes retaken on the capture of Oporto by the allied British and Portuguese forces pronounced for, and salvage of one eighth awarded. *Ibid.* 210. 218.

22. Salvage *held* not to be due to a King's ship for rescuing from the enemy a derelict hired transport employed in the same expedition, the case being considered to rest on the same principle as that of assistance afforded by one vessel to another in battle, *viz.* the principle of mere duty. *The Belle*, *Betts*, *Ibid.* 66.

23. An American vessel was seized by the French douaniers in the river Yadhe and afterwards released on bail to answer the adjudication in the French Prize Court, and as she was dropping down the river was brought out by some British gun-brigs. A claim for salvage on the part of the gun-brigs rejected, on the ground that the vessel was at the time out of the hands of the enemy, and that the services rendered by

the brigs were therefore of no value. *The Robert Hale*, *Randall*, *Ibid.* 265.

24. Salvage given for bringing off a vessel from a Spanish port within the power, though not in the actual occupation, of the French. *The Pensamento Feliz*, *Megalhuens*, *Ibid.* 115.

25. It is not necessary that the recovery of the property should be attended with personal risk to the salvor. In cases where the enemy makes a present of a captured vessel to a stranger, who has encountered no hazard, who has not endangered a hair of his head or laid out a sixpence of his money, the Court has always *Held* the party entitled to a salvage, if he has been the instrument of bringing the vessel back to the owner. *The Henry*, *Hannay*, *Ibid.* 192.

*See ante*, No. 2., and *post*, No. 44.

## V. OF THE RIGHTS OF SALVORS.

### 1. Generally.

26. Every person assisting in the rescue of a captured ship has a lien on the thing saved. He has an action *in personam* also, but his first and his proper remedy is *in rem*, and his having the one is no argument against his title to the other. *The Two Friends*, *McDougal*, 1 C. Rob. 271.

27. There is one species of recapture from the enemy which vests the whole interest in the recaptors, *viz.* where an enemy's vessel, taken originally by one English vessel and lost again to an enemy cruiser, is subsequently recaptured by another English vessel. *Note to The John and Jane*, *Ashew*, 4 C. Rob. 217.

### 2. Owners of salvaging ships.

28. In cases of salvage on recapture the master and crew are, in strict language, the only salvors. The owners have in general no great claim, and none in respect of labour and danger. They come in under the equitable consideration of the Court for the damage or risk which their property might have incurred, but the Court will not admit the claim of owners to any large amount. *The San Bernardo*, *Laretta*, 1 C. Rob. 178.

### 3. Where barred — *et contra*.

29. Salvage on recapture of neutral property refused to the recaptors on the ground

\* 2. Military salvage has not been allowed merely for stopping a ship going into an enemy's

port. *The Ann Green and cargo*, 1 Gallison's (AMERICAN) Rep. 293.

of the irregularity of their proceedings. *The Barbara, Banker*, 3 C. Rob. 171.

30. The right of recaptors to military salvage is extinguished by a subsequent capture and a regular sentence of condemnation of the vessel salvaged carried into execution, and divesting the owners of their property. *The Charlotte Caroline, Ader*, 1 Dodson, 200.

31. The right to military salvage on recapture *Held* not to be prejudiced by a subsequent capture and condemnation in an enemy's port, such condemnation having been afterwards overruled by an order of release from the sovereign power of that state, a competent authority in that country. *Ibid.* 198.

#### VI. OF JOINT-SALVORS.

32. Where a recapture is made by a King's ship all other King's ships in sight are permitted to share, but a privateer in sight is not entitled to such privilege. *The Wanstead, Morton*, Edwards, 268.

33. The mere fact of being in sight at the time of recapture by King's ship will not, but an actual chasing will, entitle a privateer to share in salvage on recapture. Claim of a privateer in such a case allowed accordingly. *Ibid.*

34. A ship in sight at the time of capture is entitled to share in military salvage for recapture from the enemy as joint-captor with certain exceptions, such as being on a directly contrary course to the captor and the prize, &c. *The Sparkler, Brown*, 1 Dodson, 360.

35. A claim of a sloop to share in salvage on recapture, she having been in sight but incapable, by reason of being becalmed, from coming up to render assistance, pronounced against. *The Dorothy Foster, Sowden*, 6 C. Rob. 88.

36. Claim of a King's ship to share as joint-captor in military salvage on recapture of a vessel from the enemy pronounced for, on proof of joining in chase, and seeing and being seen by the prize with slight interruptions up to and after the capture. *The Sparkler, Brown*, 1 Dodson, 361.

*See ante*, Nos. 17. 19, 20,  
21., and *post*, No. 56.

*See* JOINT-CAPTURE.

#### VII. AWARDS OF —

##### 1. Under the general maritime law.

37. On recapture from the enemy by a non-commissioned vessel of a ship which

had become a droit of admiralty, the value being 12,000*l.* and the capture being one of no great exertion, one third of the value awarded to the salvors. *The San Bernardo, Laretta*, 1 C. Rob. 178.

38. Under circumstances of considerable merit the Court awarded the whole proceeds of the prize (2900*l.*) as a reward to non-commissioned captors, one third to the owners of the vessel and two thirds to the crew, to be divided according to the usual proportions in private ships-of-war. *The Haase, Dreyer*, *Ibid.* 286.

39. A case of recapture by chasing and taking the capturing ship during which the prize escaped, *Held* not to be within the provisions of the Prize Act, from the fact that the recaptured ship never came into the actual possession of the recaptors. Salvage decreed under the general Maritime Law, one eighth awarded. *The Edward and Mary, Tilly*, 3 C. Rob. 305.

40. In a case of recapture of an English ship, with a French (enemy) cargo on board, by non-commissioned captors, one sixth of the value of the vessel and the whole of the cargo, which was of small value, decreed as salvage to the recaptors. *The Fortuna, Gerritz*, 4 C. Rob. 78.

41. In a case of salvage on recapture of a British prize ship deserted by the captors, one fourth given on a value of 600*l.*, and an application for a moiety as for salvage of a derelict refused, the Court holding that it was not a case of derelict, as no *animus derelinquendi* could be imputed to the owner. *The John and Jane, Ashew*, 4 C. Rob. 216.

42. The Court is disposed to extend the benefit of salvage on recapture in cases not restricted by the Prize Act. In a case of salvage of a vessel abandoned by the enemy under circumstances rendering it a case of derelict rather than of compulsory abandonment, *Held* that the case did not fall within the restrictions of the Prize Act, and one fourth allowed as salvage. *The Gage, Mitchell*, 6 C. Rob. 273., and *Lambton*, *note thereto*.

43. Where a vessel had been captured by the enemy and deserted, not from terror of the salvors but to go in pursuit of another prize, *Held* that it was not a case of salvage and recapture within the meaning of the Prize Act, and restricted to the rate of salvage there given, but a case of derelict. A moiety given, the salvage being one of much labour and skill. *The Lord Nelson, Luckie*, Edwards, 79.

44. Salvage given on a vessel purchased

at sea from the enemy for the purpose of restoring her to her former owners. The amount of the purchase money and one seventh of the remaining value of the ship awarded to the salvor. *The Henry, Hannay*, Ibid. 192.

45. A vessel was taken by the enemy, but restored in consideration of a bill for 1000*l.* given by the master payable in London, payment of which he caused to be stopped. On application of the master for military salvage on the cargo as a donation from the enemy, one tenth thereof and his expenses awarded. *The London, Brown*, 2 Dodson, 74.

See RANSOM.

See *antè*, Nos. 1. 4. 8. 17.  
19. 21. 27.

## 2. Under the provisions of the Prize Acts.\*

46. It is not essential to constitute a capture or such an one as to give occasion to a recapture under the Prize Act, that the enemy should have taken actual possession of the prize. *The Edward and Mary, Tilly*, 3 C. Rob. 305.

47. But the statute allotting salvage on recapture held to require actual possession of the recaptured vessel to entitle the recaptor to salvage. *Ibid.* 307.

48. In a case of salvage on recapture of a vessel by cutting her out from under a French battery, Held that such a case is confined to the principles of reward contained in the Prize Act; the provisions thereof extending thereto, one eighth awarded accordingly. *The Apollo, Veal*, Ibid. 308.

### (a) What vessels entitled to the higher rate of salvage.

49. Revenue cutters held to be entitled to salvage on recapture as private ships of war, viz. to one sixth. *The Helen, Mar-*

*shall*, 3 C. Rob. 224.; but see *The Active, Smith*, cited therein, after the decision in which it was held that a revenue cutter was entitled only as a King's ship, viz. to one eighth.

50. The Court gives one sixth to revenue cutters, the same as to privateers in cases of salvage, considering them rather as private ships-of-war than as King's ships. *The Bellona, Voltz*, Edwards, 63.

51. Revenue cutters are on the fiscal, not the military establishment of the state, and are only entitled to make captures from the enemy by virtue of letters of marque. They are entitled under the 45 Geo. 3. c. 72. to one sixth of the value of ships and goods retaken by them from the enemy. *The Sedulous, Mills*, 1 Dodson, 253.

### (b) What vessels entitled to the lower rate of salvage.

52. Ships-of-war on the public military establishment of the country are entitled under the Prize Act (45 Geo. 3. c. 72.) to one eighth only of the value of ships and goods retaken by them from the enemy. Store ships held to be ships-of-war, and entitled only to the same rate of salvage. *The Sedulous, Mills*, 1 Dodson, 253.

## VIII. OF THE APPORTIONMENT OF —

53. In distributing rewards to persons for salvage on recapture, the character and condition of the parties is a material consideration, because the nature of a reward carries with it a necessary reference to the rank and circumstances of the person rewarded; and an elevated condition gives the person greater influence over the enterprise, and exposes him to greater severity of treatment in case of failure. *The Two Friends, McDougal*, 1 C. Rob. 285.

54. A salvage award of 4000*l.* to non-

\* 3. By 55 Geo. 3. c. 160. s. 5. British ships &c. captured by the enemy, and at any time afterwards recaptured by his Majesty's subjects, shall be restored to the owners on payment of salvage to the recaptors of one eighth of the value if retaken by his Majesty's ships-of-war, and of one sixth if retaken by private ships-of-war; and if any such ship shall be retaken by the joint operation of one or more of his Majesty's ships, or of any private ships-of-war, such salvage shall be paid by the owners as the Court of Admiralty shall determine, but if any such ship shall have been set forth for war by the enemy, it shall be condemned as prize to the recaptors. (This act, however, expired with the last war.)

4. By the ancient practice under the old Prize

Acts (13 Geo. 2. c. 4. s. 18., 17 Geo. 2. c. 34. s. 20., and 29 Geo. 2. c. 34. s. 24.), if a vessel were retaken by a private ship-of-war after being in possession of the enemy twenty-four hours, a salvage of one eighth was due; if above twenty-four and under forty-eight hours, a fifth; if above forty-eight and under ninety-six, a third; if above ninety-six, a moiety. These rules were borrowed from a placart of the Dutch States, dated June, 1702. See *The John, Hay & Marriott*, 152.; *The Lucretia*, Ibid. 230. If the prize were taken by a King's ship, one eighth was usually awarded as salvage; if it had been fitted out by the enemy as a ship-of-war, it was usual to award a moiety as salvage. *The Reward*, Ibid. 226.

commissioned captors for recapture from the enemy of a vessel afterwards condemned as a droit of Admiralty, apportioned as follows:—

|   | £     |
|---|-------|
| To the owners - - -                                 | 2000  |
| To the master - - -                                 | 1000  |
| To the crew (the mate taking a double share) - - -  | 1000  |
| <i>The San Bernardo, Laretta,</i><br>1 C. Rob. 178. | £4000 |

55. On recapture of a vessel from the enemy, a salvage award of 4320*l.* apportioned as follows:—

|   | £     |
|---|-------|
| To the master - - -   | 1250  |
| To a passenger who took an active part in the rescue, 1250 <i>l.</i> , together with 320 <i>l.</i> personal expenses, &c. - | 1570  |
| And to each of the five seamen engaged, 300 <i>l.</i> -   | 1500  |
| <i>The Two Friends, M'Dougal,</i> Ibid. 285.  | £4320 |

56. Where a recapture is made by a King's ship, all other King's ships in sight are permitted to share, but a privateer in sight is not entitled to such privilege. Where, therefore, a privateer is the actual, and the King's ship the constructive, recaptor, they are not to share on terms of reciprocity. In such a case one sixth salvage having been decreed, the King's ship was only allowed to share against the privateer as upon an eighth. Where a King's ship was the actual, and a privateer the constructive recaptor, the salvage of one sixth awarded decreed to be apportioned to the parties according to their respective forces. *The Wanstead, Morton, Edwards,* 268.

See ante, Nos. 27. 37.

#### IX. OF THE LIABILITY OF RECAPTURED PROPERTY TO THE PAYMENT OF —

##### 1. Of neutral property as subject to condemnation in the Courts of the captors' country — et contra.

57. It is not the common practice of the Law of Nations to grant salvage on recapture of neutral vessels, upon the plain

principle, that the liberation of a clear neutral from the hand of the enemy is no essential service to him, inasmuch as the enemy would be compelled by the tribunals of his own country to release the neutral with costs and damages. *The War Onskan, Biedumpel,* 2 C. Rob. 299.

58. But the French at this period (1799) having by their edicts and decisions introduced into their proceedings with regard to neutrals lawless and irregular practices, the British Courts made French captures an exception to the rule, and decreed salvage, considering the liberation of neutral property from their hands to be a most substantial benefit. Salvage in this case, under such circumstances, decreed accordingly.\* *Ibid.*

59. The general rule is, that salvage on neutral property retaken out of the hands of the enemy is not given. In such a case salvage refused, unless it could be shown by reference to the ordinances or to the practice of the Prize Courts of the enemy (the French) that the property was taken originally under such circumstances as would have exposed it to condemnation in the hands of the enemy. *The Carlotta, Pasqual,* 5 C. Rob. 54.; and *The Jonge, Lambert,* and cases cited in note thereto.

60. The general rule that neutral property recaptured from the enemy is not subject to salvage was broken in upon only in the case of French captures during their lawless seizures, and the exception did not alter the established doctrine of the High Court of Admiralty. *The Huntress, Stinson,* 6 C. Rob. 104.; but see *Principe de la Paix,* note thereto.

61. Salvage on recapture of Russian neutral property from the French, opposed on the ground that the proceedings of the French Prize Courts (the irregularity of which had occasioned the practice of awarding salvage on recapture of neutral property) had become more regular, and that Russian interests were protected by a recent convention with France and Russia, decreed. *The Eleonora Catharina, Kreaigh,* 4 C. Rob. 156.

62. Salvage given on American vessels recaptured from the French and Danes, not having certificates of origin on board, on the ground of the probability, under the circumstances, of their condemnation in the

\* 5. The Appendix to 2 C. Rob. 375. contains a review of the French proceedings in matters of prize, which occasioned the allowance of military

salvage on recapture of neutral property from French cruisers.

enemy's Prize Courts. *The Acteon, Mason, Edwards, 254.*

63. In a case of salvage on recapture of neutral property from the Spaniards, *Quære*, whether salvage was due, as a recapture from the Spaniards is to be distinguished from cases of recapture from the French, no imputation attaching on the prize proceedings of Spain. *The Barbara, Barker, 3 C. Rob. 171.*

64. Salvage refused on recapture from the Spaniards of an American ship and cargo of naval stores going to Malta on the account of the American government and for the American squadron, on the ground that such a destination would not have rendered the vessel liable to condemnation in the Spanish Prize Court; and therefore that the case came within the general rule of restitution under such circumstances of neutral property on recapture, without salvage. *The Huntress, Stinson, 6 C. Rob. 104.*

65. Salvage decreed on the recapture of neutral (American) property from a Spanish enemy, an ally of France, and who had seized the prize for a breach of the blockade of the British isles under the French ordinance of November, 1806, by trading thereto. *The Sanson, Stevens, Ibid. 410.*

## 2. Of neutral property on board British armed ships.

66. Salvage is due for the recapture from the enemy of neutral goods on board a British armed ship. *The Fanny, Lawton, 1 Dodson, 443.*

## 3. Of neutral property under treaties with this country.

67. Salvage of one eighth decreed (under a treaty for restitution on salvage between this country and Spain) on a Spanish ship recaptured after having been more than twenty-four hours in possession of the enemy. *The San Francisco, Du Paula, Edwards, 279.*

68. A stipulation by treaty between two foreign states, that free ships should make free goods, does not warrant such a certain conclusion as that enemies' ships should make enemies' goods. Claim of salvage

for the recapture of cargo otherwise neutral on board British ships rejected, and recaptors' expenses refused. *The Cygnet, Kidd, 2 Dodson, 299.*

## 4. Of vessels restored to former owners by reason of their having been purchased under illegal condemnations.

69. Salvage as in a case of recapture allowed on restitution of a vessel to the original owner, on account of the illegality of the condemnation under which it had been purchased. *The Flad Oyen, Martensen, 1 C. Rob. 140.; The Thomas, M'Quay, Ibid. 322.*

## 5. Of property of an allied sovereign.

70. The property of an allied sovereign recaptured from the enemy decreed to be restored free from salvage or expenses. Captors' expenses directed to be paid by the Government, but no salvage allowed. *The Alexander, Crane, 2 Dodson, 37.*

## 6. Of Government property.

71. Claim for salvage under the Prize Act on recapture of a Government ship, laden with Government stores, opposed on the ground that the act awarded salvage only when the property recaptured belonged to the King's subjects, pronounced for, and salvage awarded accordingly. *The Betsey, Hay & Marriott, 80.*

## 7. Of other property.

72. Certain cargoes of ships captured by the enemy, and by them landed and warehoused, were recaptured and again put on board the ships. *Held* that such cargoes were liable to salvage on recapture, as property taken away *jure belli*, having the hand of the enemy still upon it, and to be considered therefore as if it had never been severed. *The Progress, Barker, Edwards, 211. 217.\**

## 8. Where the property was lost from accident pending adjudication.

73. In a case of salvage on recapture, in

\* 6. A prize ship in distress, brought into the ports of a neutral by persons rendering aid, is subject to salvage, and, after payment thereof will be

restored to those who were in possession of her when she was met with. *Booth et al. v. The Esperanza, Bee's (AMERICAN) Rep. 92.*

which the ship and cargo, having been, by agreement between the recaptors and the proprietor, brought into the Thames under a joint speculation of advantage as to the most beneficial manner of disposing of the cargo, was then destroyed by the accident of fire, *Held* that the removal having taken place by agreement, and for the benefit of both parties, the loss was to be borne *pro rata*. *The Creighton, Henderson*, cited in *The Three Friends, Hefferson*, 4 C. Rob. 272.

74. In a case of salvage on recapture, in which the ship and cargo had been restored to the proprietor on bail to answer salvage, but were destroyed by fire before the appraisement of the cargo had been completed, *Held*, as to the ship, that the appraisement having been executed, possession was restored to the owner, and that salvage was due thereon, according to the appraised value; but as to the cargo, that the appraisement not having been completed, that was in the custody of the Court, and that therefore the loss must fall on both parties, according to their several interests. *The Three Friends, Hefferson*, 4 C. Rob. 268.

#### 9. Of freight.\*

75. In a case of recapture, to make the freight contributory to salvage, it would not be sufficient that the ship was enabled to earn freight by the act of recapture. If a vessel had been cut out of port, and had been afterwards recaptured, it could not be contended that salvage would be due on the freight accruing on the following voyage. The question is, whether the freight was in course of being earned. In giving freight the Court does not make separations of minute portions of it. If a commencement have taken place, and the voyage be afterwards accomplished, the whole freight, and not *pro rata itineris*, is included in the valuation of the property on which salvage is given. The sailing of the vessel from her clearing port to a neighbouring one, for the purpose of joining convoy, *held* to amount to an inception of the voyage, justifying the including freight in the valuation of property on

which salvage was given. *The Dorothy Foster, Snowden*, 6 C. Rob. 88.

76. Salvage on recapture *held* to be due upon the whole freight of a ship which had gone out under a charterparty for the voyage out and home, and had been recaptured in the port of destination of the outward voyage. *The Progress, Barker, Edwards*, 223.

#### 10. As between owners and charterers.

77. A ship was let to freight from London to Lima, under a charterparty, at so much per ton per month, payable after the ship should have reported at the Custom House in London. The outward cargo was delivered, and a homeward cargo taken in at Lima, with which she sailed, was captured, but recaptured, arrived, and reported in London. Certain expenses were incurred in obtaining restitution of the ship and cargo, and salvage had been decreed to the recaptors. The proceeds of the homeward cargo fell short of the freight due: upon the question as to who was liable for payment of the salvage and the expenses of obtaining restitution, *Held*, first, as to the salvage, that the shipowner alone was liable, since salvage is due from those alone who are benefited by the recapture; and in this case, had there been no recapture, the freighter would not have been liable for freight, for the ship could not then have reported in London, upon which condition alone freight was payable; and that though by the recapture he recovered his goods, their value was exceeded by the freight, so that he was a loser by the recapture. Secondly, that the freight alone was liable for so much of the charges as were paid to obtain restitution of the cargo, since he alone was benefited by the restitution; for had the cargo never been restored, the shipowner would not have suffered, since his freight was payable, not on delivery of the cargo, but on reporting in London, and it was therefore immaterial to him if he came home in ballast; but the freighter was benefited, since thereby he acquired a fund wherewith to discharge a portion of the freight. *Cox v. May* (1815), 4 M. & S. 152.

\* 7. The Prize Acts, in awarding salvage on recapture, do not mention the freight: they only direct a portion of the value of the ships, vessels, boats, and goods restored, to be paid as salvage. But as the goods, if taken to the place of destination, are valued there, the freight is of course in-

cluded in the valuation, and so the freighter may pay salvage upon it. *Abb. Sh.* 639. n. In the *Racehorse, White*, 3 C. Rob. 101., an eighth of the freight was ordered to be deducted between the owner and freighter, for the salvage paid by the former in respect of freight.

## X. PRACTICE IN CASES OF.

1. *Requisites of proof.*

78. A certificate of the master of the vessel salvaged is sufficient to found a claim for salvage on recapture, unless the instrument be in any way falsified. Military salvage of a neutral vessel recaptured from an enemy pronounced for accordingly, on affidavits of the recaptors and such a certificate (though repudiated by the master). *The Charlotte Caroline, Ader*, 1 Dodson, 192.

2. *Value of property salvaged how to be estimated.\**

79. In estimating the value of recaptured property for the purpose of a salvage apportionment, the true rule is to take the value, not at the time of capture, but at the place of restitution, which is to be considered with reference to the moment of the arrival of the property in port. *The Progress, Barker, Edwards*, 222.

## SALVAGE (MIXED).

## CASES OF A MIXED MILITARY AND CIVIL CHARACTER.

1. War salvage being generally fixed at a low rate may be increased when joined with special services in the nature of civil salvage. *The Sir Francis Burton, Hare*, 2 Hagg. 157.

2. If a capture be made with an intention of prize, and the ship turn out to belong to a friend, there is no reason why the original but mistaken intention of the captor should defeat any salvage interest that might arise from other circumstances in the case. Civil salvage decreed accordingly for actual services rendered at the same time in preserving the ship and valuable cargo in distress. 500*l.* and costs awarded. *The Franklin, Goodrich*, 4 C. Rob. 147.

3. Salvage is not due to the crew of a ship for rescuing it from mutineers. *The Governor Raffles, King*, 2 Dodson, 14.

4. A King's ship held not entitled to salvage for rescuing a convict vessel from the possession of the convicts and of the mutinous crew and soldiers on board her, no great danger or personal exertion having

been incurred; but costs of asserted salvors allowed. *The Francis and Eliza*, 2 Dodson, 115.

5. A slave-ship on the coast of Africa was rescued from insurgent slaves by another slave-ship. The Court likened it to a rescue effected from pirates, or out of the hands of the public enemy, and awarded one tenth of the value as salvage. *The Trelawny, Lake*, 4 C. Rob. 223.

6. A claim for salvage for rescue of a slave-ship from insurgent slaves, held not to be substantiated. *The Ann, Bicknell*, 5 C. Rob. 100.

7. Recaptors from pirates have a lien on the property for salvage, and are entitled to a reward. One eighth might be a proper award to them. *Marianna, Dos Santos*, 3 Hagg. 208.

8. An award of salvage made by a foreign Court on a foreign vessel derelict, and rescued from pirates by the commanders and crews of two British vessels, though far exceeding the rate of salvage usually allowed by this Court, adopted here. *Calypso*, 2 Hagg. 213.

9. A vessel, part of whose crew had been captured by pirates, approached the

\* 8. In estimating the value of ship and goods recaptured, for the purpose of awarding military salvage thereon, the wearing apparel of the master and seamen are always excepted from the allowance of salvage. 1 *Park on Ins.* 327., *Beawe's Lex Merc.* 147.

9. The valuation of a recaptured ship, in order to ascertain the rate of salvage, may be determined by the policy of insurance, if there be no reason to suspect she is undervalued, and the same rule may be observed as to goods where there are policies

upon them. If that, however, should not be the case, the salvors have a right to insist upon proof of the real value, which may be obtained through the merchants' invoices. *Ibid.*

10. By Order in Council of 30th April, 1813, it is directed that on claims in Vice-Admiralty Courts for restitution on salvage after recapture, the valuation of the ship and cargo shall be made by appraisement without sale or unlivery, unless under special circumstances. *Appendix B. to 3 Hagg.* 445.



harbour of A., having a signal of distress hoisted, and firing guns at intervals. Certain parties put off to her, and brought her into harbour, effecting the service during a period of two hours and a half only, with no risk or great exertion. An expedition against the pirates was afterwards planned and undertaken by the salvors and the rest of the crew, in which, after having ransomed that part of the crew which had been captured, the pirates were attacked and some slain; but the greater part made their escape. A claim of salvage having been preferred in respect of such services, the bringing the vessel into harbour held to be a salvage service; but the expedition against the pirates not to be of that character, and that it would not have been so had the expedition been undertaken solely for the rescue of the crew, and successfully. 30*l.* awarded as salvage; and, no tender having been made, with costs. *The Mary, Blossie*, 1 W. Rob. 448.

10. In a cause of mixed military and civil salvage, the Court inclined, though no bail had been given, to support a valuation and award, not clearly excessive, made on the spot, and on reference to three competent arbitrators, chosen by both parties, but since objected to by the owners; a specific sum, abating something from the amount awarded, decreed, with costs of the

salvors. *The Sir Francis Burton, Hare*, 2 Hagg. 156.

11. Military salvage pronounced for on donation from the enemy of a ship and part of the cargo captured by them, to the master, in consideration of his taking home crews of other prize vessels taken by them, together with civil salvage for exertions in bringing home the ship and cargo. *The Sir Peter, Garlick*, 2 Dodson, 73.

12. A British ship was taken by the French, who took out all the crew but the master and a boy, who, however, rose on the prize master and crew, and having regained possession of the vessel, made for England. A violent storm coming on, the master applied for and obtained assistance from an English frigate, by whose aid he continued to manage the vessel until it was thought dangerous to remain longer on board, when they all removed to the frigate. The storm abating shortly afterwards, the master and his assistants returned on board, and ultimately brought the vessel into port. Salvage of one sixth (1000*l.*) awarded to the master and boy, viz. 850*l.* to the master, and 150*l.* to the boy; 500*l.* awarded to the whole crew of the frigate, to be distributed as in a case of prize. Claim of the frigate for salvage as in case of a derelict rejected. Costs directed to be paid by the owners. *The Beaver, Conner*, 3 C. Rob. 292.

## SEA.\*

1. It is no part of the sea where one may see what is done on one side of the water and the other. *The King v. Fortynine Casks of Brandy*, 3 Hagg. 203., 4 Inst. 140., 6 Vin. Abr. 121.

2. The coast is properly not the sea, but the land which bounds the sea. It is the limit of the land jurisdiction. This limit, however, varies according to the state of the tide. When the tide is in and covers

\* 1. The sea is where the water flows and re-flows, and is so spacious that a man cannot see land from one shore to the other. 2 Rol. 169. l. 20., 14 Com. Dig. 260.

2. All waters below the line of low water mark on the sea coast are within the term high seas, and when the tide flows, the waters to high water mark also are properly the high seas. *The Abby*, 1 Mason's (AMERICAN) Rep. 360.

3. An island is defined by the Imperial Law to be *locus undique circumdatus aquis*. Cal. 20.

4. A creek is an inlet of the sea, extending within the land, which gives no harbour to ships, nor is endowed with any privileges. *Ibid.* 34.

5. A haven is a harbour for ships, but it is not necessary that it should have privileges annexed to it. *Ibid.*

6. Every port is a haven for ships which enjoys

several privileges by prescription or the King's grant. *Ibid.*

7. *Portus est locus in quo exportantur et importantur merces*. 4 Inst. 148.

8. No port is part of the sea, but of the continent. *Note to Godolphin's Adm. Jur.* 113.

9. As to what is a port, and where a vessel shall be deemed within the port, see 1 *Park on Ins.* 76. 79.

10. As to what shall be deemed the port of London, see 2 *Park on Ins.* 692.

11. All havens and ports are *infra corpus comitatús*. 4 Inst. 148.

12. The King shall have flotsam, jetsam, and lagan, when a ship perishes, or when the owner of the goods cannot be known. And this right attaches though they are in or upon the sea, for the sea is of the allegiance of the King and parcel of his Crown of England. 5 Rep. 108., 16 Vin. Abr. 577.

the land, it is sea; when the tide is out, it is land as far as low-water mark. Between high and low water-mark it must therefore be considered as *divisum imperium*, unless the water be within a county. *Ibid.* 275. 283.

3. A roadstead is a known general station for ships, *statio tutissima nautis*, noto-

riously used as such, and distinguished by the name, and not every spot where an anchor will find bottom and fix itself. *The Rebeckah*, *Thompson*, 1 C. Rob. 229.

See CROWN, *cap. I. sect.*  
3.; DROITS OF ADMIRALTY,  
*cap. II. sect. 2.*

## SECURITY FOR COSTS.\*

### I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY TO COMPEL —

#### II. OF THE TIME OF APPLICATION FOR —

#### III. OF THE AFFIDAVITS TO LEAD APPLICATIONS FOR —

#### IV. OF PAYMENTS INTO COURT IN LIEU OF —

#### V. IN RESPECT OF COSTS ALREADY INCURRED.

#### VI. IN CAUSES OF BOTTOMREY.

#### VII. IN CAUSES OF DAMAGE.

#### VIII. BY FOREIGNERS.

#### IX. BY MARINERS.

#### X. BY REASON OF BANKRUPTCY OR INSOLVENCY.

#### XI. BY REASON OF RESIDENCE OUT OF THE JURISDICTION OF THE COURT.

### XII. BY REASON OF RESIDENCE ABROAD.

#### 1. Generally.

#### 2. Where about to go abroad.

#### 3. In cases of partial and temporary residence in this country and abroad.

#### 4. In Scotland, Ireland, and Calcutta.

#### 5. Of public functionaries and officers.

#### 6. Where action is brought without the knowledge of the plaintiff abroad.

#### 7. Where there are co-plaintiffs in England.

### XIII. UNDER OTHER CIRCUMSTANCES.

### XIV. HOW FAR AVAILABLE IN THE COURT OF APPEAL.

### XV. OF THE CANCELLATION OF —

### I. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY TO COMPEL —

1. The Court of Admiralty has the power of compelling security to be given for costs, which it will exercise on fit occasions when applied to. *The Johann, Friederich*, 1 W. Rob. 39, 40.

### II. OF THE TIME OF APPLICATION FOR —

2. Applications for security for costs should be made in the earliest stage of the proceedings, and in ordinary cases the Court will enforce the observance of this rule. An application for security for costs after the act on petition had been concluded and both proctors assigned to bring in their proofs, granted under the circumstances, the owner against whom the security was prayed being resident abroad, and the action having been entered

without his authority or knowledge. Security to the amount of 80*l.* decreed to be given. *The Volant, Merchant*, 1 W. Rob. 384.

3. Applications for security for costs ought to be made at the commencement of the suit, and this rule should be strictly observed. *The Conon*, 6 Jur. 351.

4. If a plaintiff be out of the jurisdiction and the defendant require from him security for costs, the right to have the security is waived, if it appear that after the defendant had knowledge that the plaintiff was out of the jurisdiction, he permitted any proceeding to be taken in the cause. *Onge v. Truelock* (1829), 1 Beat. 341.

See post, No. 23.

### III. OF THE AFFIDAVITS TO LEAD APPLICATIONS FOR —

5. In order to obtain a rule for security for costs on the ground of the plaintiff re-

\* 1. For further cases on this head, see *Harri-son's Digest*, vol. 1. p. 1818. *et seq.*, and vol. 3.

p. 7134., *Chitty's Equity Index*, vol. 3. p. 1195. and vol. 4. p. 2147.

siding out of the jurisdiction, it must be positively sworn that he is so resident, and "belief" to that effect is insufficient. *Sandys v. Hohler*, 6 Dowl. P. C. 274., 1 W. W. & H. 57.

6. *Semble* that the affidavit to ground an application for security for costs on the ground of the plaintiff being resident abroad is sufficient if it state that the deponent believes the plaintiff resides abroad. *Dowling v. Harman*, 8 Dowl. P. C. 165., 4 Jur. 43.

*See post*, Nos. 31, 32, 41.

#### IV. OF PAYMENTS INTO COURT IN LIEU OF—

7. A plaintiff residing out of the jurisdiction was allowed to pay 120*l.* into Court, in lieu of giving security for costs in the usual manner. *Chiffe v. Wilkinson*, 4 Sim. 123.

#### V. IN RESPECT OF COSTS ALREADY INCURRED.

8. The Court will not compel a plaintiff to give security for costs already incurred. *Oxenden v. Cropper*, 4 Dowl. P. C. 574.  
*See post*, No. 66.

#### VI. IN CAUSES OF BOTTOMRY.

9. In a cause of bottomry, in which the bondholder having elected to proceed by plea and proof, instead of the more usual mode of proceeding by act on petition and affidavits, the parties opposing the bond applied to the Court to decree security for costs, the Court, holding itself bound to presume that the bond was duly executed, declined making any such order without some special reason being adduced. *The Minerva, Crawford*, 1 W. Rob. 172.  
*See post*, No. 26.

#### VII. IN CAUSES OF DAMAGE.

10. In a cause of collision between two foreign vessels the Court, on an application on behalf of the vessel arrested, will compel security for costs to be given by the foreign owners instituting the suit, by requiring of them to give bail to answer any cross-action that may be instituted against them, before it will allow them to proceed in the cause. *The Johann, Friederich*, 1 W. Rob. 39, 40.

11. Plaintiffs, being foreigners resident abroad, required in an action for damage in the Court of Admiralty to give security for costs. *The Seringapatam*, 10 Jur. 1065.  
*See post*, Nos. 28, 67.

#### VIII. BY FOREIGNERS.

12. The Court will not compel a foreign ambassador to give security for costs. *Demontellano (Duke) v. Christian*, 5 M. & S. 503.

13. The Court will compel a Scotchman to give security for costs, as a foreigner. *Ker v. Duchess of Munster*, Bun. 35.

14. It seems that security for costs cannot be required from a foreigner, a master of a vessel, trading to this country, but having no fixed residence here. *Kasten v. Plaw*, 1 M. & P. 30.; *S. P. Nelson v. Ogle*, 2 Taunt. 253.

15. Security for costs will not be required from a foreigner during the time he is resident in this country. *Anon.* 3 Moore, 78.

*See antè*, No. 10.; and  
*post*, Nos. 17, 19, 27, 45.

#### IX. BY MARINERS.

16. In a suit for wages, a mariner directed to give bail to answer costs. *The Edwin, Robertson*, 3 Hagg. 366.

17. Security for costs will not be required from a prisoner of war, who sues for wages earned on board an English ship. *Maria v. Wall*, 2 B. & P. 236.

18. Where a plaintiff is a mariner and is abroad on a voyage, his family being left in this country in lodgings, he will not be required to give security for costs. *Ford v. Boucher*, 1 Hodges, 58.

19. A foreign seaman having brought an action for his wages against a foreigner, the Court of Common Pleas refused to compel him to give security for costs, on account of his being on a voyage on board an English ship. *Henshen v. Garves*, 2 H. Black. 303.; *S. P. Jacobs v. Stevenson*, 1 B. & P. 96.

*See antè*, No. 14., and  
*post*, No. 45.

#### X. BY REASON OF BANKRUPTCY OR INSOLVENCY.

20. A party propounding a will having become bankrupt, directed to give security for costs. *Goldie v. Murray*, 2 Curteis, 797.

21. A plaintiff in equity becoming bankrupt will not be compelled to give security for costs. *Anon.*, 2 Anst. 407.

22. The Court will not compel security for costs on the ground that the plaintiff is a bankrupt or in Newgate. *Anon.* 2 Taunt. 61., 1 Rose, 111.

23. The Court refused to order a plaintiff to give security for costs, on the ground that he had been three times an insolvent and once a bankrupt, and was only suing as trustee for a third person. *Wray v. Brown*, 6 Bing. N. C. 271., 8 Dowl. P. C. 279., 4 Jur. 271.

24. An uncertificated bankrupt suing for his own benefit, as for the produce of his earnings since the bankruptcy, cannot be compelled to give security for costs. *Cohen v. Bell*, 1 Tidd's Practice, 580. Otherwise where the action is brought or proceeded in by a bankrupt, whether certificated or not so, for the benefit of his assignees. *Sanders v. Pierse*, and *Robertson v. Arnold*, 1 Tidd's Prac. 581.; S. P. 1 Chit. 267. n.

25. Where a plaintiff becomes bankrupt in the middle of a cause, the assignees, if they proceed with the action, must give security for all the costs. The defendant may apply for this security at any time before a fresh step in the cause is taken. *Mason v. Polhill*, 2 Dowl. P. C. 61., 1 C. & M. 620., 3 Tyr. 595.

*See post*, Nos. 49. 68.

#### XI. BY REASON OF RESIDENCE OUT OF THE JURISDICTION OF THE COURT.

26. In proceedings in the Court of Admiralty, the Court will require, unless under particular exceptions, security for costs to be given in all cases in which the owners are resident out of the jurisdiction of the Court. *The Sophie, Gustavus*, 1 W. Rob. 326.

*See post*, Nos. 57. to 62.

#### XII. BY REASON OF RESIDENCE ABROAD.

##### 1. Generally.

27. A foreign part-owner, resident abroad, the action having been entered by another person in his name, required, after the cause had proceeded some way, to give security to the amount of 60*l.* for costs, the Court intimating, that had it known the facts at first, it would have decreed in the first instance security to be given for costs. *The Conon*, 6 Jur. 351.

28. When a party is out of the kingdom, the Court will direct him to give security for costs. *Hillam v. Walker*, 1 Hagg. (Eccl.) 72.

29. Security for costs is not required of an English subject, though abroad. *Tullock v. Crowley*, 1 Taunt. 18.

30. The simple fact that the plaintiff is

gone abroad is not a sufficient ground to compel him to give security for costs. *Hoby v. Hitchcock*, 5 Ves. jun. 699.

31. A plaintiff is not compellable to give security for costs, unless he state himself, or it be sworn, that he is resident abroad, or going to reside abroad. *Green v. Charnock*, 2 Cox, 284., 3 Bro. C. C. 371., 1 Ves. jun. 396.

32. It is not sufficient that the plaintiff appears by the bill to be out of the jurisdiction; he must appear to be resident abroad. *Ibid.*

33. It is not necessary that the residence abroad of a plaintiff should be permanent in order to entitle a defendant to call upon him for security for costs. *Lovell v. Meadows*, Mur. & H. 45.

34. If the plaintiff reside permanently abroad, the Court will stay proceedings till he give security for the costs. *Pray v. Edie*, 1 T. R. 267.; *Elan v. Rees*, 3 Doug. 382. But see *Lamii v. Sewell*, 1 Wils. 266., and *Boswell v. Irish*, 4 Burr. 2105.

35. So in C. P. *Ganesford v. Levy*, 2 H. Black. 118. But see *Parquot v. Elling*, 1 H. Black. 106.

36. So in the Exchequer, *Demanroffe v. Jackson*, 13 Price, 603.

37. Security for costs by a plaintiff gone abroad refused, after answer, on affidavit of his intention to return, and his family remaining in this country. *White v. Greathead*, 15 Ves. 2.

38. If a plaintiff be resident abroad, the Court of C. P. will require him to give security for costs, although he sue in the capacity of executor. *Chevalier v. Finnis*, 3 Moore, 602., 1 B. & B. 277.

39. Where a defendant moves that the plaintiffs residing abroad shall give security for costs, the Court will not make the rule mutual, on the ground that the defendant is also resident abroad. *Baxter v. Morgan*, 2 Marsh. 80., 6 Taunt. 379.

*See ante*, Nos. 18. 22., and *post*, Nos. 41, 42.

##### 2. When about to go abroad.

40. The Court will not grant an application for security for costs where the plaintiff, though a foreigner and usually resident abroad, is at the time actually in this country. *Dowling v. Harman*, 6 Mee. & W. 131., 8 Dowl. P. C. 165., 4 Jur. 43.

41. A plaintiff is not compellable to give security for costs unless he state himself, or it be sworn, that he is resident abroad, or going to reside abroad. *Green v. Char-*

*noch*, 2 Cox, 284.; S. C. 3 Bro. C. C. 371., 1 Ves. jun. 396.

42. An application for security for costs on account of the plaintiff leaving the kingdom refused. *Adams v. Colethurst*, 2 Anst. 552.

43. Security for costs is not required from a person usually residing abroad but at the time in this country, although he is about to leave the country. *Ciragno v. Hassan*, 6 Taunt. 20., 1 Marsh. 421.

44. In equity the Court will not make an order to stay proceedings, until security be given for the costs, upon the ground of the plaintiff being about to leave the country. *Willis v. Garbutt*, 1 Y. & J. 511.

*See antè*, No. 31.

### 3. In cases of partial and temporary residence in this country and abroad.

45. Security for costs is not required from a foreigner during his absence from this country on board his own ship, if he reside here part of the year. *Durell v. Mattheson*, 3 Moore, 33., 8 Taunt. 711.

46. If the plaintiff be a native of England and depart for France, for a mere temporary absence, the Court will not compel him to give security for costs. *Anon.* 2 Chit. 152.

47. Security is not required from a person whilst in this country, although usually residing abroad. *Anon.* 8 Taunt. 737.

48. If a plaintiff be permanently resident abroad, and only occasionally resident in this country, he will be liable to give security for costs. *Gurney v. King*, 3 Dowl. P. C. 559., 1 Har. & W. 203.

49. Security for costs will not be required of a bankrupt residing abroad, especially if such residence is only of a temporary nature. *Roper v. Phillips*, 3 M. & R. 84.

*See antè*, Nos. 14. 40. 43.

### 4. In Scotland, Ireland, or Calcutta.

50. A party residing in Scotland will be required to give security for costs. *M'Lean v. Austin*, *Sheriff v. Farquharson*, *Hill v. M'Iver*, 1 Tidd's Prac. 579. But see *Maxwell v. Mayer*, 2 Burr. 1026., 1 W. Black. 271.

51. A plaintiff, a Scotchman, not actually domiciled in this country, but only occasionally residing here, is bound to give security for costs. *Naylor v. Joseph*, 10 Moore, 522.

52. For such a plaintiff is within the meaning of the general rule applicable to

persons suing in this country, who are not amenable to the Courts here. *Ibid.*

53. So also is a plaintiff so resident in Ireland. *Mahon v. Martinez*, 4 Moore, 356.

54. A plaintiff residing in Ireland ordered to give security for costs. *Hill v. Reardon*, 6 Mad. 46.; *Fitzgerald v. Whitmore*, 1 T. R. 362.; *Maloney v. Smith*, M'Clel. & Yo. 213.

55. A public company carrying on all their business in Ireland directed to give security for costs, although they had 3000*l.* in a bank in London, and most of the members resided in England. *Limerick and Waterford Railway Company v. Fraser*, 4 Bing. 394., 1 M. & P. 23.

56. The Court refused to require security on the ground that the plaintiff's residence was at Calcutta. *Mincomar v. Burdett*, Cowp. 158.

*See antè*, No. 13.

### 5. Of public functionaries and officers.

57. The Court will compel a foreign potentate resident abroad, a plaintiff, to find security for costs in a cause arising out of commercial transactions. *Emperor of Brazil v. Robinson*, 6 Ad. & E. 801., 5 Dowl. P. C. 522., 1 Nev. & P. 817., W. W. & D. 278.; S. P. *The King of Greece v. Wright*, *Ibid.* 594., 6 Dowl. P. C. 12., 1 Jur. 944.

58. A consul abroad, plaintiff in a suit, need not give security for costs. *Colebrooke v. Jones*, 2 Ves. 154.

59. Security for costs will not be required from an English officer serving in South America. *O'Laughla v. Macdonald*, 3 Moore, 77.

60. Where it appears that the plaintiff is an officer in his Majesty's service, and out of the jurisdiction, the defendant will be entitled to the usual security for costs, unless it be distinctly stated that the plaintiff is on *actual* service. *Lillie v. Lillie* (1835), 2 Myl. & K. 404.

61. A lieutenant in the Navy holding the office of port captain and harbour master under the Crown in the island of Barbadoes, where he had been resident sixteen years, held not compellable to find security for costs. *Evering v. Chiffenden*, 1 W. W. & H. 560., 7 Dowl. P. C. 536., 3 Jur. 288., 9 Sim. 497.

62. Security for costs will be required from an officer in the service of the East India Company. *Powell v. Bernard*, 1 Hog. 144.

6. *Where action is brought without the knowledge of the plaintiff abroad.*

63. If an action be brought without the knowledge of the plaintiff, who is out of the realm, the Court will require security for the costs to be given on the part of the plaintiff. *Ball v. Adrian*, 1 Taunt. 64.

*See ante*, Nos. 2. 27.

7. *Where there are co-plaintiffs in England.*

64. If one of two plaintiffs be resident abroad and the other in this country, the Court will not compel the absent plaintiff to give security for costs. *Anon.* 1 Dowl. P. C. 300., 2 C. & J. 88.; *S. P. Minchin v. Minchin*, 1 Price's P. C. 159.; *S. C. nom. Wilson v. Minchin*, 1 Dowl. P. C. 299., 2 C. & J. 87., 2 Tyr. 166.; *Anon.* 7 Taunt. 307.; *Walker v. Easterby*, 6 Ves. jun. 612.; *Orr v. Bowles*, 1 Hodges, 23.

XIII. UNDER OTHER CIRCUMSTANCES.

65. In an action for damage promoted by the master and sole owner of a foreign vessel, motion for security for costs to be given by him, opposed on the ground that his vessel had been arrested under a decree of the Court for necessities supplied to her under the 3 & 4 Vict. c. 65. granted, and security to the amount of 100*l.* decreed to be given accordingly; the Court holding that the having a hold upon the vessel in another suit would not enable the Court to apply its process for the enforcement of the payment of the costs of a second suit, if necessary. *The Sophie, Gustavus*, 1 W. Rob. 327.

66. Where the plaintiff, after issue joined, has been convicted of felony, and received sentence of transportation, the Court will compel him, or his attorney, to give security for costs retrospective and prospective. *Harvey v. Jacob*, 1 B. & A. 159.

67. In equity the circumstance that a plaintiff has no fixed place of abode, and that it is difficult to find him, is not a sufficient ground for compelling him to give security for costs, unless he goes out of the jurisdiction of the Court. *Fraser v. Palmer*, 3 Jur. 145., Exch.

68. A plaintiff will not be compelled to give security for costs merely on the ground of his poverty. *Ross v. Jacques*, 8 Mee. & W. 135., 9 Dowl. P. C. 737.

69. The mere circumstance of the plaintiff being imprisoned does not entitle the defendant to call for security for costs. *Baddeley v. Harding*, 6 Mad. 214.

70. On a motion to compel the plaintiff to give security for costs the Court of Common Pleas will not enter into the merits of the case, nor grant the rule on account of the hardship of the case upon the defendant. *Ciragno v. Hassan*, 1 Marsh. 421., 6 Taunt. 20.

*See ante*, No. 22.

XIV. HOW FAR AVAILABLE IN THE COURT OF APPEAL.

71. Security given in the Court of Admiralty cannot be made available in the Court of Appeal. The Court requires fresh security and a new proxy. *Sheffield v. Ball and others*, 2 Lee, 291.

XV. OF THE CANCELLATION OF —

72. When security for costs has been given by the plaintiff residing out of the jurisdiction, the Court will not order the bond to be delivered up to be cancelled before the end of the suit, on the alleged ground that the plaintiff has since returned to England with the intention of permanently remaining. *Badnall v. Haylay*, 4 Mee. & W. 535., 7 Dowl. P. C. 19., 1 Horn. & H. 359., 2 Jur. 992.

## SHIPS.

## I. GENERAL CONSIDERATIONS AS TO —

## II. OF THE LIABILITY OF —

1. *Generally.*
2. *In cases of collision* — see *DAMAGE.*
3. *In mariners' wages* — see *WAGES.*

## III. PROCEEDS OF SALE OF — UNDER THE AUTHORITY OF THE COURT OF ADMIRALTY.

1. *Of claims against* —

## IV. SHIP'S PAPERS.

## V. MISCELLANEA.

VI. OF THE AMELIORATION OF — see *AMELIORATIONS.*VII. OF AVERAGE ON — see *AVERAGE.*VIII. OF THE HYPOTHECATION OF — see *BOTTOMRY.*IX. OF THE CAPTURE OF — see *CAPTORS, CAPTURE, PRIZE.*X. OF THE APPURTENANCES OF — see *OWNERS.*XI. OF THE POSSESSION OF — see *POSSESSION.*XII. OF THE SALVAGE OF — see *SALVAGE.*XIII. OF TITLE TO — see *TITLE.*XIV. OF WRECKS OF — see *WRECK.*

## I. GENERAL CONSIDERATIONS AS TO —

1. It is a well known rule of interpretation, that ships, being property of a peculiar description, do not pass under general terms, or unless specially described. *Ships taken at Genoa*, 4 C. Rob. 398.\*

## II. OF THE LIABILITY OF — †

1. *Generally.*

2. Question raised but not determined, whether a foreign ship-of-war can be in any way proceeded against in the Court of Admiralty or the Courts of this country for salvage, wages, or other civil liabilities. *The Prins Frederick, Van Senden, Commander*, 2 Dodson, 451. ‡

3. In all causes of action which may arise

from circumstances occurring during the ownership of the persons whose ship is proceeded against, no suit can be maintained against the ship where the owners are not personally liable, or where their personal liability has not been given up, as in bottomry bonds, by taking a lien on the vessel. The liability of the ship and the responsibility of the owners in such cases are convertible terms. The ship is not liable if the owners are not responsible, and *vice versa*. *The Druid, Newton*, 1 W. Rob. 399.

4. A ship may be liable where the owners would not be personally responsible, as in cases of lien upon a ship for seamen's wages or bottomry bonds, where the lien has been acquired before the existing owners made their purchase. As against the enforce-

\* 1. Nautical men apply the term ship to distinguish a vessel having three masts, each consisting of a lower mast, a topmast, and topgallantmast, with their appropriate rigging. In familiar language it is usually employed to distinguish any large vessel, however rigged, but it is also frequently used as a general designation for all vessels navigated with sails. *McCulloch's Commercial Dictionary*, tit. *Ship*.

2. A full description of the different spars, rigging and sails, and of the portions of the frame of a ship, as also of the different kinds of merchant vessels, will be found in the plates and references at the commencement of *Dana's Seaman's Manual*.

3. A ship is a personal chattel, and therefore, generally speaking, subject to the rules which govern that description of property. *Smith's Merc. Law*, 164.

4. See the regulations contained in the 9 & 10 Vict. c. 100. with regard to sea-going vessels carrying boats.

5. See the regulations with regard to steam navigation contained in 9 & 10 Vict. c. 100., printed in the Appendix.

6. As to the rights, duties, and liabilities of the ship's husband, see *Abb. Sh.* part i. cap. 3. p. 106. and note.

† 7. By the Marine Law, the ship and freight are bound to the performance of the covenants of the shipowner, and the goods to the performance of the covenants of the merchant. *Abb. Sh.* 284. Though, however, the ship and freight are by the terms of a charterparty expressed to be so bound, and this is conformable to the Maritime Law, there does not appear to be at present any mode of obtaining in this country the benefit of the security of the ship itself, in specie, for the performance of such a contract made here. *Ibid.* 285.

‡ 8. A public armed vessel of a foreign friendly sovereign entering a port open for her reception, on the terms on which ships-of-war are generally permitted to enter the ports of a friendly power, is not subject to the jurisdiction of the nation in whose port she lies, and title to such a vessel cannot be asserted by libelling her in the Courts of Admiralty. *The schooner Exchange v. M'Faddon*, 2 Cranch's (AMERICAN) Rep. 115.

ment of the outstanding lien in a proceeding against the ship in the Court of Admiralty, the owners would have no legal defence on the plea that the existence of the lien was unknown to them at the time the purchase was effected. *The Druid, Newton*, Ibid. 398, 399.

5. A ship, while the possession of it is retained, is specifically chargeable in respect of the expense incurred in repairing it; but the possession parted with, the lien is lost. *Ex parte Bland*, 2 Rose, 91.

### III. PROCEEDS OF SALE OF—UNDER THE AUTHORITY OF THE COURT OF ADMIRALTY.

#### 1. Of claims against—

6. By 3 & 4 Vict. c. 65. s. 3. whenever a vessel shall be under arrest in the High Court of Admiralty, or proceeds thereof brought into the registry, the Court of Admiralty shall have jurisdiction over claims of mortgagees, and to decide any suit instituted by such persons in respect of such claims.\*

7. Upon the sale of a ship in a suit for wages by Admiralty process issuing after the seizure of the same vessel by the sheriff under a writ of *fiery facias*, *Held*, that the claim of the sheriff to the surplus proceeds in discharge of his execution was good as against the late owner of the ship. *The Flora, Findlay*, 1 Hagg. 298.

8. Proceeds of a ship and cargo sold abroad and transmitted from a Vice-Admiralty Court to the registry of the High Court of Admiralty, decreed on motion to be paid out to the respective consignees of the cargo, on the consent of the purchaser of the cargo. *The Lady Banks, Vallance*, Ibid. 306.

9. Material men have no lien on the proceeds deposited in the registry of the Court of Admiralty of a ship sold under the authority of that Court. *The Neptune, Cumberlege*, 3 Knapp, 94. overruling 3 Hagg. 129.

10. Creditors likewise have no right to such proceeds. *Ibid.* 3 Hagg. 149.

11. A mortgagee in possession of a ship sold in the Court of Admiralty under a decree of the Court for the payment of seamen's wages, *Held* entitled preferably to material men to the proceeds of the sale of such ship after payment of the wages and costs, and payment thereof decreed to him accordingly. *Ibid.* 3 Knapp, 94.

12. The mortgagees of 48-64ths of a ship claimed the balance of proceeds thereof in the registry of the Court of Admiralty. This claim was opposed by a party who claimed the proceeds in respect of advances made by him for payment of the wages, board, and lodging of the master and crew, for which advances the certificate of registry had been deposited with him by the master as security, with a letter acknowledging the same. The Court considering itself bound by the case of *The Neptune* (2 Knapp, 94.) pronounced against the claim of the material man, and directed the proceeds to be paid to the mortgagees on the production of their deed, holding them entitled further to their costs out of the proceeds. *The New Eagle*, 10 Jur. 623., 4 Notes of Cases, 426.

13. The payment of the proceeds as decreed having been subsequently opposed by a party alleging himself to be the sole owner, and imputing misconduct to the mortgagees, the Court, without hearing counsel, stated that it could not enter into the question of the conduct of the mortgagees, and directed the proceeds to be paid out to them as before decreed. *Ibid.*

14. Assignees of a bankrupt shipowner have a *persona standi* to appear for the benefit of the general estate and contest the appropriation of the proceeds of the ship against the assignees of the freight, seeking to make the ship alone liable in the first instance; and this notwithstanding the shipowner had prior to his bankruptcy assigned his interest in the ship to other parties not before the Court, as a security for money advanced. *The Dowthorpe, Lofty*, 2 W. Rob. 73. 77.

15. In a question as to the appropriation of the proceeds of ship and freight

\* 9. Prior to the above statute a vessel having been sold under a decree of the Court of Admiralty in a suit for wages, application for the balance of the proceeds in the registry to be paid on the one hand to a mortgagee who had not obtained possession, and on the other to the executor of the sole owner, respectively refused. The proceeds directed to remain in the registry, subject to such order as might come to the Court with regard to them. *The Portsea, Lamb*, 2 Hagg. 84.

10. Prior to the same statute a vessel having been sold under a decree of the Court of Admiralty in a suit for wages, an application of the assignees of the owners for the surplus proceeds to be delivered out to them, opposed by a mortgagee, rejected. The Court directed the amount to be invested in the purchase of Exchequer bills. *The Exmouth, Owen*, Ibid. 88. n.



in satisfaction of outstanding judgments against them for bottomry, wages, pilotage, &c. where a part-owner had become a bankrupt, but had previously assigned to one party his interest in the ship, and to another party his interest in the freight, of whom the assignees under his bankruptcy and the assignees of the freight were before the Court, and the other part-owner, who was alleged also to have become a bankrupt, was not before the Court; the Court entered into an investigation of the relative claims of the parties, and apportioned the proceeds among them accordingly, in lieu of compelling them to have recourse to a Court of Equity to define the relative proportions due to them. *Ibid.* 73. 86.

#### IV. SHIPS' PAPERS.\*

See MARINERS' CONTRACTS, SHIPS' REGISTERS.

#### V. MISCELLANEA.

16. By 9 & 10 *Vict. c. 99. s. 16.* any receiver, or in his absence any justice of the peace, shall forthwith take examina-

tions in writing upon oath of any person belonging to any ship in distress or others, able to give an account thereof as to the ship's name, cargo, destination, &c., the occasion of her distress, the services rendered, and any other circumstance relating to such ship or cargo, or any of the stores thereof, as he may think fit, and transmit a copy thereof to the Receiver General, and another copy to the secretary at Lloyd's, for which he shall receive a fee of one pound from the owner or out of the proceeds of sales, and the ship or cargo may be detained until payment thereof; and if any such before mentioned person shall refuse to be so examined he shall be liable to a penalty not exceeding 50*l.*

17. By 9 & 10 *Vict. c. 99. s. 44.* in case of vessels in distress wrecked, stranded, or run on shore being wholly or in part plundered, damaged, or destroyed by a tumultuous assemblage, whether on shore or afloat, the hundred shall be liable for the damages in England and Wales, in the same manner as is provided by the stat. 7 & 8 *Geo. 4. c. 31.*, and in Ireland in the same manner as is provided by the stat. 3 & 4 *W. 4. c. 37.*

\* 11. The papers required by the Law of Nations to be on board neutral ships to vindicate their title to that character, are — 1st, the passport, sea brief, or sea letter; 2d, proofs of property, bill of sale, &c.; 3d, the muster roll; 4th, the charter-party; 5th, bills of lading; 6th, invoices; 7th, the log book; and 8th, the bill of health. See 1 *Marsh. on Ins., caps. 9. and 6.*, where each of these documents is explained and the particulars thereof fully set forth, and *Abb. Sh.* 347. n.

12. The certificate of origin contains the name, occupation, and residence of every owner, the name of the ship, her tonnage, the place to which she belongs, the name of the master, the time and place of her build or condemnation, the name of the surveying officer, the number of decks and masts, the height, breadth, and depth between decks, &c. &c., and on the back must be endorsed the names of the owners. *Fynn's British Consul's Handbook*, 36.

13. An arbitration bond is an agreement in the form prescribed by 7 & 8 *Vict. c. 112. s. 3. schedules A. & B. (i. e. the mariners' contract).* *Ibid.* 33.

14. A muster roll is an account of the ship's company in the form prescribed by 7 & 8 *Vict. c. 112. s. 26. schedule C.*

15. A ship's manifest is a paper containing a true and faithful account of the goods on board, made out, dated, and signed by the master, at the place where the same, or the different parts thereof, were taken on board, and it must set forth the name and tonnage of the ship, the name of the

master and of the place to which the ship belongs, and of the place or places for which they are destined respectively, and the name of the respective shippers or consignees, as far as the same are known to the master. No British ship can clear out of or depart from any foreign port unless the manifest is produced to, and signed by, the consul, who must certify on the same the date of its production to him. *Fynn's British Consul's Handbook*, 34.

16. The bill of health (quarantine) is that space of time, originally forty (*quaranta*) days, during which ships, persons, and goods, are restricted from any intercourse with the shore on their arrival from places infected with the plague or other contagious diseases. The period of quarantine varies according to the nature of the bills of health given to commanders by the consul on their clearance from foreign ports. These documents may be divided into three distinct classes; the clean bill, the suspected bill, and the foul bill. The clean bill is issued where no contagious disorder is known to exist; the suspected bill where there is reason to fear it exists; the foul bill, where it is known to exist. The latter document occasions the performance of the full period of quarantine. *Ibid.* 36.

17. The Ship Registry Acts do not prevent a person from having a lien on papers, deposited with him, of a ship which he is commissioned to sell. *Mestaer v. Atkins*, 5 Taunt. 381., 1 *Marsh.* 76.

## SHIPS' REGISTERS.

## I. GENERAL CONSIDERATIONS AS TO —

## II. OF THE EFFECT OF — AS EVIDENCE OF OWNERSHIP.

## III. OF THE POSSESSION OF —

1. *Of the Jurisdiction of the Court of Admiralty to enforce —*2. *Statutory enactments to enforce —*3. *Of the parties entitled to — et contra.*

See NAVIGATION LAWS, cap. III. sect. 3.

## I. GENERAL CONSIDERATIONS AS TO —

1. A register is not a document required by the Law of Nations, as expressive of a ship's national character. *Le Cheminant v. Pearson* (1812), 4 Taunt. 367.

2. To prove a ship British built, a British registry so describing her is by itself no evidence. *Reusse v. Meyers*, 3 Camp. 475. (Ellenborough.)

## II. OF THE EFFECT OF — AS EVIDENCE OF OWNERSHIP.\*

3. *Quere*, are not the register and certificate conclusive evidence of want of title against those not named therein? *The Frances, Syme*, 2 Dodson, 431.

4. An American vessel having been sold under a decree of the Court in a cause of bottomry, motion for a monition against the American consul to bring in the ship's register, which had been delivered to him by the master subsequently to the arrest of the ship, rejected as unnecessary to perfect the purchaser's title. In the case of a British vessel, however, different considerations would apply. *The Tremont, Gray*, 1 W. Rob. 163.

5. If the ship's register taken from the Custom House recite that she was a vessel captured by the enemy, sold to a neutral subject and by him to a British subject, it is *prima facie* evidence of the property. *Woodward v. Larking*, 3 Esp. 287. (Eldon.)

6. The production of the register from the Custom House is conclusive evidence of ownership. *Marsh v. Robinson*, 4 Esp. 98. (Le Blanc.)

7. The register of a ship is conclusive evidence of the property, upon the policy of the Registry Acts, even against the claim of creditors upon a joint purchase and various acts of apparent ownership within the Bankrupt Act, 21 James 1. c. 19. s. 11. *Ex parte Yallop*, 15 Ves. jun. 60.

8. The registry of a ship is conclusive evidence of the property, even between creditors, excluding all trusts created by acts of the parties, as by payment of money on a purchase in the name of another. Distinction as to trusts arising by operation of law upon bankruptcy or death. *Ex parte Houghton, ex parte Gubbe*, 17 Ves. 251.; S.C. 1 Rose, 177.

9. In an action against several defendants for stores supplied to a ship by order of the captain, *Held* at Nisi Prius that the register, obtained on the oath of one of the defendants, was *prima facie* evidence of ownership against all. *Stokes v. Carne*, 2 Camp. 339. (Ellenborough.)

10. The certificate of a ship's registry is not evidence to charge as owners any of the persons therein named as such, other than those who have joined in the affidavit on which the registry is obtained. *Cooper v. South*, 4 Taunt. 802.; *S. P. Tinkler v. Walpole*, 14 East, 226.†

## III. OF THE POSSESSION OF —

1. *Of the jurisdiction of the Court of Admiralty to enforce —*

11. *Semble*, that a prohibition will not lie to restrain the Court of Admiralty from taking cognisance of a suit instituted in that Court by the majority of shipowners,

\* 1. If the title of a ship really come in question, no claim can be made in opposition to the provisions of the Registry Act. 2 *Park on Ins.* 861.

2. A certificate of registry is evidence that the party whose name is not mentioned therein is not owner. *Ibid.* 862.

† 3. Although it was the intention of the legislature, in passing the Registry Acts, to form a

public record of the property in British ships, yet it is a clear proposition that persons who are merely named as owners in the ship's register are not liable as such, for these documents are not recognised as conclusive evidence of ownership, unless shown to have been made by the concurrence of, or recognised by, the owners. 4 *Taunt.* 802., 14 *East*, 226., 2 *Camp.* 176., 2 *Taunt.* 302., *Ibid.* 5., 3 *Camp.* 456., 2 *Park on Ins.* 861.

as against an individual owner, to restore the possession of the ship's register in order that she may sail on her voyage. *Anon.* 2 Chit. 359., 3 D. & R. 178. n.

### 2. Statutory enactments to enforce —

12. By 8 & 9 Vict. c. 89. s. 30. any person, whether claiming as master or owner or otherwise, who shall wilfully detain the certificate of a ship's registry from the officers of Customs or the master or owner in possession of the ship claiming the same, shall, on complaint and proof thereof on oath to any neighbouring justice of peace, forfeit 100*l.*, and such justice shall certify such detainer, and the ship shall be registered *de novo*; and if the person detaining the certificate shall have absconded, the ship may be registered as in case of lost certificate.

13. Under the 34 Geo. 3. c. 68. s. 18., which contained a similar clause, it was decided, that it did not authorize a conviction of a master who did not comply with the requisition of the owner (though the sole owner), to deliver up such certificate to him, though expressed to be for the purpose of procuring the necessary indorsement to be made on it at the Custom House upon the transfer of the ship to him. *Rex v. Pixley*, 13 East, 91.

14. Under 6 Geo. 4. c. 110. s. 27. and 3 & 4 W. 4. c. 55. s. 27. a conviction for detaining the certificate of a ship's registry was bad, unless it stated the purpose for which the certificate was wanted, and that the person who demanded it was the proper officer. *Rex v. Walsh*, 1 A. & E. 481.; S. C. 3 N. & M. 632.

15. By 8 & 9 Vict. c. 89. s. 26. any person having possession of any certificate of registry which ought to be delivered up to be cancelled, according to the conditions of the bond therein-before required to be given on the registry of any ship, is thereby required to deliver up such certificate, as directed by the conditions of the bond, in the respective cases and under the respective penalties therein provided.

### 3. Of the parties entitled to — *et contra*.

16. Motion, at the suit of a bottomry bondholder for monition against A. (the purchaser of the ship under a sale from the original owner since her arrival in port, and which sale was asserted to be a collusive one to defraud the bondholder,) to deliver up the ship's register, granted, and

monition decreed accordingly. A. having afterwards made a return that he had deposited the register with B., monition decreed against B. to the same effect, when the register was delivered up. *The Barbara, Cheguin*, 4 C. Rob. 2.

17. The Court will grant a monition, at the suit of an owner having the majority of interest, to show cause why the ship's register should not be delivered to him. *The Frances, Syme*, 2 Dodson, 422.

18. The Court will not interfere to give possession of a ship's register to persons whose title to be considered as registered owners is involved and doubtful. Possession thereof refused in such a case, but costs reserved until the adjustment of the claim in another Court. *Ibid.* 420.

19. The owner of a ship consigned her to persons abroad, who hypothecated her, and directed the captain to sign a bottomry bond. On her arrival in London he by their direction delivered the register to the defendant (the agent of the consignees), who gave it to their solicitor to institute proceedings in the Court of Admiralty on the bottomry bond. The ship was sold by order of that Court, and the register decreed to be given up to the purchaser. The owner became bankrupt, and his assignees brought an action of trover for the register; *Held*, that they could not recover, as they might have appeared in the Admiralty Court and prevented the sale of the vessel, and as the delivery of the register to the purchaser under the decree of that Court was not a conversion. *Hassack v. Masson*, 4 Moore, 361.

20. A. commissioned B. to sell a ship for him, and, having deposited her register with him for that purpose, became bankrupt; *Held*, that B. had a lien on the register against the assignees of A. for the amount of his demand against A., consisting partly of charges incurred on the ship's account, and partly of other charges, and that this was not such a transfer of the property as to bring the case within the meaning of the Register Acts. *Mestaer v. Atkins*, 1 Marsh. 76., 5 Taunt. 381.

21. Where the certificate of a ship's register has been deposited as a security for advances for the use of the ship, *Held*, that this gives the holder a sufficient lien to defeat an action of trover for the certificate. *Bowen v. Fox*, 10 B. & C. 41., 5 M. & R. 5., 4 Car. & P. 452.

22. *Quare*, whether a person holding the certificate under such circumstances, and refusing to give it up when demanded,

is guilty of a wilful detention within the meaning of the Register Act, 4 Geo. 4. c. 41. s. 25. *Ibid.\**

23. Where a factor for the owner of a ship at an English port had, by a request to the master, obtained the certificate of

registry for the alleged purpose of paying the tonnage duties at the Custom House, *Held*, that he had no lien on the certificate so obtained for the general balance due to him in respect of the ship. *Burn v. Brown*, 2 Stark. 272. (Bayley.)

## SLAVES.

### I. GENERAL CONSIDERATIONS AS TO —

### II. OF THE CUSTODY AND DISPOSAL OF —

See SLAVE TRADE.

### I. GENERAL CONSIDERATIONS AS TO —

1. Circumstances denoting the condition of slavery considered in *The Woodbridge, Munnings*, 1 Hagg. 71.

2. Slaves belonging to an estate on which they were employed as *glebae ascriptitii*, *Held* to form part and parcel of the realty, and not to pass therefore to the captors, but *aliter* as to those employed on the public arsenals of the enemy. *Demerara and its Dependencies*, 1 Dodson, 264.

3. Where there is no positive regulation to the contrary, the general character and description of slaves is, that they are personal property. In such a case slaves *held* to be goods and merchandize within the meaning of the Prize Act, 45 Geo. 3. c. 72. s. 3., and to pass to captors as such. *Ibid.* 265.

4. The statute law of this country looks on slaves as *res positæ in commercio*, mere goods and chattels, subject to mortgages, &c., and has established Courts of the highest jurisdiction for carrying such provisions into execution. *The Slave Grace*, 2 Hagg. 129.

5. By the Slave Code every acquisition by the slave is an acquisition to his master. *Ibid.* 117.

6. Slaves coming into England, though runaways, are free there, and cannot be sent out of the country against their consent, by any process to be executed in this country. *Ibid.* 118. 121.

7. Slavery not being recognised by the law of England, slaves by landing in England are here emancipated. *Somerset v. Stewart*, Loft. 1.

8. Slavery is not so divested by mere temporary residence in England without manumission, as to entitle a person, after such residence is expired and after a return to the place of birth and servitude, to maintain a suit founded upon a claim of permanent freedom. The right to freedom in consequence of residence in England subsists only while the party continues to reside in England. *The Slave Grace*, 2 Hagg. 100—117.

9. A female attendant, by birth and servitude a domestic slave, who accompanied her mistress to England, and after a year's residence there returned voluntarily with her to the place of her birth and servitude, *Held*, though free whilst in England, to be on such her return subject to the former rights of parties over her as a slave, those rights being suspended during, not divested by, her residence in England. *Ibid.* 94.

10. No action lies at the suit of a slave coming to this country, and continuing his service, for wages on an implied contract. *Alfred v. Fitzjames*, 3 Esp. 3.

11. Contracts as to slaves made in England, to take effect abroad, where slavery is allowed, are valid; and contracts made by a slave abroad in order to his manumis-

\* 4. A lien may, notwithstanding the Ships' Registry Acts, be acquired upon the certificate of registry or other papers belonging to a ship, in like

manner as upon any other deeds or papers. *Abb. Sh.* 85.

sion, may be enforced here. *Somerset v. Stewart*, Lofft. 1.

12. Where negroes in a state of slavery in a colony of Spain escaped from their master's plantation, and took refuge and were received on board a British ship-of-war, whilst she was stationed at an island captured by his Majesty's arms from the United States in time of war, and after notice given to the officers commanding on the station that they were runaway slaves, the officers carried them to sea, and left them at a British colony; *Held*, that an action on the case would not lie in this country by a British subject, who claimed the slaves as his property, against the officers, for harbouring and detaining such negroes, although by the *lex loci* from whence they escaped slavery was permitted and tolerated. *Forbes v. Cochrane*, 3 D. & R. 679., 2 B. & C. 448.

13. By 6 & 7 Vict. c. 98. s. 2. all persons holden in servitude as pledges for debt shall, for the purposes of the 5 Geo. 4. c. 113., of the 3 & 4 W. 4. c. 73., and of this act, be deemed slaves.

## II. OF THE CUSTODY AND DISPOSAL OF—

14. By the 5 Geo. 4. c. 113. s. 22. all slaves and persons treated as such, seized as prize of war, or liable to forfeiture under this act, shall, for the purpose only of seizure and condemnation as prize or forfeiture, be considered as slaves and property in the same manner as negro slaves have been theretofore considered, when seized as prize of war or forfeited for any offence against the laws of trade and navigation; but the same shall be condemned as prize of war or as forfeited to the sole use of his Majesty, for the purpose only of divesting all other interest therein previously existing, and the same shall in no case be liable to be sold: but his Majesty and the officers appointed by Order in Council to receive and provide for them may enlist them in his Majesty's army or navy, and bind them apprentices, under

such regulations as his Majesty shall by Order in Council direct; and by s. 24. slaves so apprenticed, ill-treated by their masters, may apply to the Judge of any neighbouring Vice-Admiralty Court, who shall decide summarily thereon, and may fine the master in any sum not exceeding 100*l*., and enforce payment thereof and cancel the indentures of apprenticeship; and such fine shall belong to his Majesty.

15. By s. 32. the mode of providing during the period of adjudication for any slaves or persons treated as such, captured as prize of war or seized as liable to forfeiture, is set forth, and it is provided, that if the party claiming the slaves shall neglect to make such provision for them pending proceedings, a valuation of them shall be made, and they shall be dealt with as prescribed by that act (in s. 22.) for slaves condemned to his Majesty's use, but no bounty shall be payable for them unless finally condemned: s. 33. provides for the disposal of the slaves in cases of appeal.

16. By s. 33. where sentence of condemnation or restitution of slaves shall have passed and be suspended by appeal, the Court may and shall, notwithstanding such appeal, proceed forthwith to direct such slaves to be valued as therein-before directed, and after such valuation, to be delivered to the officers therein-before mentioned, to receive slaves condemned to his Majesty's use, and such slaves shall be dealt with as slaves condemned to his Majesty, save that bounties shall not be due thereon unless finally condemned.

17. By s. 34. where slaves shall be restored in the Court of Appeal, restitution in value (which valuation is subject to correction by the Court of Appeal) shall be awarded, deducting expenses of maintenance, &c.

18. By s. 23. in case persons detained in slavery shall escape to any colony, &c. of his Majesty, his Majesty's officers appointed under that act may receive and provide for them as by s. 22. is directed.

## SLAVE TRADE.\*

## I. OF THE PENALTIES AND FORFEITURES IMPOSED ON BRITISH SUBJECTS AND PROPERTY ENGAGED IN —, 423.

1. *Generally*, 423.
2. *Of the Courts having jurisdiction for the recovery of* —, 424.
3. *Of the onus of proof in cases of* —, 424.
4. *Of the limitation of actions to enforce* —, 424.
5. *Of exemptions from* —, 424.
6. *Of the payment and distribution of* —, 425.

## II. OF BOUNTIES ON SEIZURE OF SLAVES AND SLAVE SHIPS, 425.

## III. OF THE LIABILITY OF FOREIGNERS TO THE PENALTIES IMPOSED BY GREAT BRITAIN ON SUCH A TRAFFIC, 426.

## IV. OF THE LIABILITY TO CONDEMNATION OF FOREIGN SHIPS AND CARGOES ENGAGED IN —, 426.

1. *Under the general maritime law and the old statutes*, 426.
  - (a) *Of the titles of such vessels, and the investigation thereof*, 427.
  - (b) *Under colourable transfers between foreigners*, 427.
  - (c) *Where transferred colourably only to foreigners, but belonging to British subjects*, 427.
  - (d) *Of the onus of proof in such cases*, 428.
2. *Of the modern statutory regulations thereon and the construction thereof*, 428.
3. *Of the British Courts of Admiralty having jurisdiction as to* —, 428.

## V. OF THE TREATIES WITH FOREIGN NATIONS FOR THE SUPPRESSION OF — AND THE STATUTES FOR CARRYING THEM INTO EFFECT, 429.

1. *Generally*, 429.
2. *The Netherlands*, 429.
3. *Sweden*, 430.

4. *Spain*, 431.5. *France*, 432.6. *Sardinia*, 433.7. *Denmark*, 433.8. *The Hans Towns*, 433.9. *Tuscany*, 433.10. *The Two Sicilies*, 434.11. *Hayti*, 434.12. *Venezuela*, 434.13. *The Argentine Confederation*, 434.14. *Bolivia*, 435.15. *Uruguay*, 435.16. *Texas*, 435.17. *Austria, Prussia, and Russia*, 436.18. *Mexico*, 437.19. *Chile*, 437.20. *Portugal*, 438.21. *Brazil*, 438.

## VI. STATUTORY REGULATIONS FOR THE EAST INDIES AS TO —, 439.

## VII. WHO MAY BE SEIZORS, 439.

## VIII. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF SEIZORS, 439.

1. *Generally*, 439.
2. *As to costs*, 440.
3. *As to costs and damages*, 440.

## IX. OF JOINT SEIZORS, 440.

## X. OF THE DUTIES AND RESPONSIBILITIES OF AGENTS OF SEIZORS, 442.

## XI. OF APPEALS IN SLAVE SEIZURES, 442.

1. *Generally*, 442.
2. *Practice in* —, 442.
  - (a) *With reference to inhibitions*, 442.
  - (b) *Of proceedings in the Court below pending* —, 443.

## XII. PRACTICE IN SUITS FOR FORFEITURES, 443.

See SLAVES.

\* 1. The principal statutes relating to the slave trade are 6 *Anne*, c. 37., 9 & 10 *W. 3.* c. 26., 5 *Geo. 2.* c. 7., 23 *Geo. 2.* c. 31., 5 *Geo. 3.* c. 44., 28 *Geo. 3.* c. 54., 29 *Geo. 3.* c. 66., 30 *Geo. 3.* c. 33., 31 *Geo. 3.* c. 54., 35 *Geo. 3.* c. 90., 37 *Geo. 3.* c. 118., 39 *Geo. 3.* c. 80., 46 *Geo. 3.* c. 52., 47 *Geo. 3.*

c. 36., 47 *Geo. 3.* c. 97., 49 *Geo. 3.* c. 26., 51 *Geo. 3.* c. 23., 55 *Geo. 3.* c. 172., 58 *Geo. 3.* c. 49., 58 *Geo. 3.* c. 98., 59 *Geo. 3.* c. 97., 59 *Geo. 3.* c. 120., 1 & 2 *Geo. 4.* c. 99., and 5 *Geo. 4.* c. 17. They are all repealed and consolidated by 5 *Geo. 4.* c. 113., (printed in the Appendix), which is amended by

I. OF THE PENALTIES AND FORFEITURES  
IMPOSED ON BRITISH SUBJECTS AND PRO-  
PERTY ENGAGED IN SUCH A TRAFFIC.

1. *Generally.*

1. By 5 *Geo. 4. c. 113.* (abolishing the slave trade) *ss.* 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11. the purchase, sale, exportation, or importation of slaves, the fitting-out, making loans on, insuring, shipping goods or serving on board, vessels engaged in the slave trade, are declared unlawful (except in special cases\* therein set forth and allowed), and penalties are imposed on each of such acts, to some of which criminal punishments are attached.

2. By *s. 4.* every vessel fitted out for the slave trade or contracted therefor shall be forfeited with all her appurtenances, and may be seized and proceeded against as therein-after set forth.

3. By *s. 40.* parties giving information to lead to seizures are exempted from the penalties imposed by the act.

4. By *s. 10.* dealing in slaves on the high seas shall be deemed piracy.†

5. By *s. 39.* all bonds, mortgages, and other securities given in contravention of the act are void.

6. By 6 & 7 *Vict. c. 98. s. 1.* the foregoing provisions of the 5 *Geo. 4. c. 113.*, and the provisions in this act, are extended to British subjects wheresoever residing, and offences against such acts committed by British subjects, whether within the dominion of the British Crown or in any foreign country, except as therein-after excepted, shall be deemed to be offences against such acts, and dealt with and punished accordingly.

7. The provisions of the statute 5 *Geo. 4. c. 113.* are not confined to acts done by British subjects in furtherance of the slave trade in England or the British colonies, but apply to acts done by British subjects in furtherance of that trade, in places not part of the British dominions. *Regina v. Zuheta*, 1 Car. & K. 215.

8. By 6 & 7 *Vict. c. 98. s. 2.* all persons

holden in servitude as pledges for debt shall, for the purposes of the 5 *Geo. 4. c. 113.*, the 3 & 4 *W. 4. c. 73.*, and of this act, be deemed slaves.

9. Prior to the above statute the master of the ship A. received on board (unknown to the owners) certain persons as pledges for the delivery of goods contracted for in barter, it being a common practice of the native merchants to give such pledges; and the goods not having been delivered, transferred such persons on board a Spanish slave ship, to be transported as slaves. The ship A. was condemned in the Vice-Admiralty Court of Sierra Leone by reason thereof, as for a breach of the Slave Abolition Act. The sentence, however, was reversed on appeal, but the captors' expenses, costs, and insurance of vessel, were allowed. *The Malta, Young*, 2 Hagg. 159. n.

10. A vessel having been seized in the port of Gibraltar on the allegation that she was engaged in carrying slaves or persons to be dealt with as such, was, upon proceedings taken against her, pronounced forfeited under the statute 5 *Geo. 4. c. 113.*, and the owners, master, and mate condemned under the same statute in penalties. On appeal from such decision the judgment was reversed, on the ground that the evidence of the persons being slaves or intended to be dealt with as slaves was in itself doubtful, and that neither the owner, master, nor mate were proved to have been cognisant of or privy to that fact, which it was the duty of the seizers to make out; but the Court being of opinion that there was probable cause of seizure, so certified accordingly, pursuant to 4 *Geo. 3. c. 15. s. 46.*, and that no action was to be brought against the seizers. *Barton and Others v. The Queen (The Winwick)*, 2 Moore, 19.‡

11. The receiving goods on board a slave ship is the joint act of the owner and master of the vessel, and the penalties given by 5 *Geo. 4. c. 113. s. 7.* are in such case joint and not several. *Del Campo and Martinez v. The Queen (The Cazador)*, *Ibid.* 15.

7 & 8 *Geo. 4. c. 74.*, 1 *W. 4. c. 55.*, 3 & 4 *W. 4. c. 73.*, continued by 9 *Geo. 4. c. 84.*, part repealed by 1 *Vict. c. 91.*, and recited in 3 & 4 *W. 4. c. 72.*, 5 & 6 *W. 4. c. 60, 61.*, 6 & 7 *W. 4. c. 6.*, 2 & 3 *Vict. c. 73.*, 3 & 4 *Vict. c. 67.*, 5 & 6 *Vict. c. 41.*, 101., 6 & 7 *Vict. c. 15.* 50, 51, 52, 53, 98., and 8 & 9 *Vict. c. 122.* By 3 & 4 *W. 4. c. 73.* slavery is abolished throughout the British colonies.

\* 2. These excepted cases have now expired by the abolition (under 3 & 4 *W. 4. c. 73.*, amended by 1 *Vict. c. 19.*) of slavery in the British colonies. The following cases were determined in the Court

of Admiralty with reference to the legality of the importation and exportation of slaves as within such exceptions or otherwise. *The Adelaide, Perenchief*, 2 Hagg. 290.; *The Slave Fanny Ford*, *Ibid.* 271.; *The Two Slaves*, *Ibid.* 273.; *The Three Slaves*, *Ibid.* 412.; *The Slave Duncan*, *Ibid.* 427.

† 3. Prior to this statute such a traffic was held not to be piracy. *Le Louis, Forest*, 2 Dodson, 246.

‡ 4. The 4 *Geo. 3. c. 15.* is now repealed, but the 8 & 9 *Vict. c. 93.*, containing similar provisions, is extended to seizures under 5 *Geo. 4. c. 113.* (*See post*, No. 193.)

2. *Of the Courts having jurisdiction for the recovery of—*

12. By 5 Geo. 4. c. 113. s. 51., and 8 & 9 Vict. c. 93. (regulating the trade of the British possessions abroad, the provisions of which are by s. 89. extended to all penalties, &c., under 5 Geo. 4. c. 113.) s. 73. the penalties and forfeitures imposed by that act may be recovered in any of his Majesty's Courts of Record or Vice-Admiralty having jurisdiction in the colony where the offence was committed, or the offender found, or the vessel brought in, or if there be no such Court there, then in any such Court of an adjoining colony.

13. By s. 12. an option is given to sue for penalties under that act in the Vice-Admiralty Courts as theretofore, notwithstanding the party sued may be also liable to criminal punishments imposed by that statute, for the same offence as that in respect of which the penalty sued for is therein imposed.

14. By 6 & 7 Vict. c. 98. s. 3. all offences against the 5 Geo. 4. c. 113. or this act, committed by British subjects out of the United Kingdom, whether within the dominions of the British Crown or in any foreign country, or by foreigners within British dominions, except in places where the British Admiral has jurisdiction, may be tried and determined according to the provisions of 9 Geo. 4. c. 31. (consolidating and amending the statutes in England relative to offences against the person.)

15. By s. 4. in all cases of indictment or information in the Court of Queen's Bench for misdemeanors or offences against the aforesaid acts, evidence may be taken abroad as therein directed, and transmitted to the Court of Queen's Bench in the manner prescribed by 13 Geo. 3. c. 63.

3. *Of the onus of proof in cases of—*

16. In order to render a party liable to the penalties under the stat. 5 Geo. 4. c. 113. for shipping goods to be employed in the slave trade, he must be shown to have had a guilty knowledge of the object of the vessel, the *onus* of proof of which lies on the parties proceeding. On appeal from a decision of the Vice-Admiralty Court of Gibraltar pronouncing for penalties in such a case, *Held* that the facts of the case did not disclose such a knowledge of the object of the vessel as to bring the party within the operation of the statute, and the appeal accordingly pronounced for, and the judgment of the Court below re-

versed. *Sherwill v. The King (The Cadzor)*, 2 Moore, 1.

17. The statute 5 Geo. 4. c. 113. throws the burden of proof of the facts necessary to constitute a liability to forfeiture or penalties upon the prosecutor; and the privileges given by s. 46. to seizers are not for their benefit, but for their protection against liability to costs and actions, where the Judge shall certify, pursuant to 4 Geo. 3. c. 15. s. 46., that there was probable cause for seizure. The evidence to be adduced by the prosecutor need not always be positive and conclusive evidence, for a *prima facie* case is sufficient where further proof cannot reasonably be expected from him, and the party accused omits to explain or repel it, where the means must be supposed to be in his power; but the seizer must establish his title by reasonable evidence, and the Court will not pronounce in his favour unless judicially satisfied that the offence has been committed. *Barton and Others v. The Queen (The Winwick)*, *Ibid.* 19.

18. In order to convict a party who is charged with having employed and loaded a vessel for the purpose of slave trading, it is not necessary to prove that the vessel which carried out the goods was intended to be used for bringing back slaves in return, but it will be sufficient if it be shown that there was a slave adventure, and that the vessel was in any way engaged in the advancement of the adventure. *Regina v. Zulueta*, 1 Car. & K. 215.

4. *Of the limitation of actions to enforce—*

19. By 5 Geo. 4. c. 113. s. 47. actions for the recovery of the penalties and forfeitures imposed by this act may be commenced within five years after the offence, but slaves illegally imported may be condemned and forfeited at any time.

20. By 8 & 9 Vict. c. 93. (which regulates the trade of the British possessions abroad, but the provisions of which are by s. 89. extended to all penalties and forfeitures created by 5 Geo. 4. c. 113.) s. 85. all suits for the recovery of penalties or forfeitures may be commenced within three years after the offence committed.

5. *Exemptions from—*

21. By 5 Geo. 4. c. 113. s. 40. if any petty officer, seaman, marine, or servant offending against the provisions of this act, shall within two years from the offence give information and evidence as therein directed, against the commander or officer



of any ship offending against the provisions of this act, so that the ship or such person may be proceeded against, he shall not be liable to the penalties in this act contained.

#### 6. *Of the payment and distribution of—*

22. By 5 *Geo. 4. c. 113. s. 44.* the proceeds of any ship and goods condemned are to be divided, after payment of expenses of prosecution, as follows:—Where the seizure was not made at sea, one third to the seizer, one third to the Crown, and one third to the governor or commander-in-chief of the colony where the seizure was made or prosecuted; where the seizure was made at sea, one half to the Crown, and the other half to the officers and crew of his Majesty's ship, the seizers, the distribution of their shares being subject to regulation by his Majesty's proclamation or Orders in Council.\*

23. By *s. 69.* the proceeds and bounties payable to captors commissioned by the governor or lieutenant-governor of any of his Majesty's colonies, shall be distributed as the Lords of the Treasury shall direct.

24. By 1 & 2 *Vict. c. 47. s. 1 & 2.* where any slave ship shall have been seized and condemned by her Majesty's ships, duly authorized under any treaty with foreign powers for the prevention of the slave trade, the moiety of the nett proceeds of the ship and cargo belonging to her Majesty under such treaties shall be paid to the seizers.

25. By 5 & 6 *Vict. c. 91. s. 1.* the proceeds of ships and goods seized and condemned under 2 & 3 *Vict. c. 73.* shall be paid to such persons as the Treasury may appoint to receive the same.

26. By *s. 2.* the nett proceeds thereof, after deducting expenses, are to be paid to the captors in such manner as her Majesty by proclamation or Order in Council shall direct.\*

27. By 8 & 9 *Vict. c. 93.* (which regulates the trade of the British possessions abroad, but the provisions of which are by *s. 89.* extended to all penalties and forfeitures created by 5 *Geo. 4. c. 113.*) *s. 84.* all penalties and forfeitures recovered under that act shall be paid to the collector of customs of the port where recovered, and be applied, after deducting the charges of prosecution, as follows:—One third for the use of her Majesty, one third to the governor or commander-in-chief of the co-

lony, and the remaining third to the seizer, except in cases of seizure at sea by her Majesty's ships duly authorized, in which, after deducting expenses, one moiety of such seizure and of the penalties and forfeitures recovered thereon, shall be paid to such collector of Customs for the use of her Majesty, and the other moiety to the seizers, but subject to such distribution of such seizures, with regard to both moieties, as her Majesty shall by proclamation or Order in Council direct.

#### II. OF BOUNTIES ON SEIZURE OF SLAVES AND SLAVE SHIPS.

28. By 5 *Geo. 4. c. 113. s. 25.* where any slaves, or persons treated as such, taken as prize of war by any of his Majesty's ships or privateers duly commissioned, shall be condemned as such to his Majesty's use as therein aforesaid, bounties shall be paid to the captors, and distributed, as to his Majesty's ships, as his Majesty, by Order in Council or proclamation\*, shall direct, and as to private ships of war, according to any agreement in writing entered into for that purpose.

29. By *s. 26.* on condemnation to the use of his Majesty of any slaves, or persons treated as such, seized and prosecuted, not as prize of war, but as forfeited for any offence against that act, bounties (which are altered in amount by 1 *W. 4. c. 55.*) shall, when such seizure has been made at sea by his Majesty's ships, be paid to the commander seizing and prosecuting, for every man, woman, and child, so condemned and delivered over, to be distributed as his Majesty shall, by Order in Council, direct, and where such seizure shall not have been made at sea by his Majesty's ships, bounties shall be paid to the person suing and prosecuting to condemnation, and to the governor or commander-in-chief of the colony where such seizure is made. (And see *post, Nos. 94. to 97.*)

30. By *s. 69.* bounties payable to captors commissioned by the governor or lieutenant-governor of any of his Majesty's colonies (see *s. 43.*), shall be distributed as the Lords of the Treasury shall direct.

31. By 1 & 2 *Vict. c. 47. s. 6.* the bounties payable under this or any other act for the seizure of slaves shall be distributed to her Majesty's ships as her Majesty by proclamation or Order in Council shall direct.

\* See the Proclamation, in the Appendix.

32. By 1 W. 4. c. 55.\* the rates of bounties on the capture of slaves, given by the 5 Geo. 4. c. 113. and 7 & 8 Geo. 4. c. 74., are reduced, and bounties of 5*l.* on each man, woman, and child slave, seized and condemned under the provisions of those acts, are given to the seisor, or to the seisor and governor respectively in those cases where the governor of any of his Majesty's colonies may be entitled.

33. By 5 Geo. 4. c. 113. s. 27., to entitle the captors to receive such bounties, the number of slaves condemned and delivered over shall be proved to the Commissioners of the Treasury by the production of a certified copy of the sentence of condemnation, and a certificate of the officer appointed to receive the slaves.

34. By s. 28. all doubtful claims to bounty money on the capture of slaves are to be summarily decided by the High Court of Admiralty, subject to an appeal to the Lords Commissioners of Appeal in Prize Causes.†

35. By 5 & 6 Vict. c. 91. s. 5. any party claiming any benefit, by way of bounty or share of proceeds, for any seizure under 2 & 3 Vict. c. 72., may resort to the High Court of Admiralty, who may adjudicate thereon.

36. By 3 & 4 Vict. c. 67. s. 6. all bounties payable under that or any other act for the abolition of the slave trade, shall not be charged with any Treasury or Exchequer fees of any description.

37. The 5 Geo. 4. c. 113. gives the Court of Admiralty power to decide on claims to share in the proceeds of, or bounties on, slave captures, although the condemnation may have passed in the Mixed Commission or other Court. This jurisdiction the Court exercises freely. *Quere*, has not the Court of Admiralty the power of examining the sentence of condemnation on any point essential to the claim which it has to decide? *The Donna Barbara, Luiz*, 2 Hagg. 370, 371. On appeal, held that the sentence of the Mixed Commission Court was conclusive as to the legality of the seizure, and not examinable therefore by the Court of Admiralty. 3 Hagg. 446. Appendix C.

38. The sentence of the Mixed Commission Court does not conclude the Court of Admiralty from determining who are the real seizors of a slave ship condemned in the Mixed Commission Court, and who are

the parties legally entitled to the bounties, conferred by Act of Parliament, on such seizures. *The Eagle, Litty*, 1 W. Rob. 249.

39. Bounty money given on the capture of slaves is a representation of the property captured, and approaching to the nature of cargo, and liable to the same distribution, though possibly not to the extreme length to which the principle of capture by mere accidental sight has been carried in prize law. The principles guiding the distribution of head-money are not applicable to bounty money. *The Aviso, Da Silva*, 2 Hagg. 37.

### III. OF THE LIABILITY OF FOREIGNERS TO THE PENALTIES IMPOSED BY GREAT BRITAIN ON SUCH A TRAFFIC.

40. Goods put on board an apparently Portuguese ship, though in reality a British ship, engaged in the slave trade, by a foreign owner *bond fide* believing the vessel to be Portuguese, *quere* liable to condemnation? *The Donna Marianna*, 1 Dodson, 94.

41. The owner of a vessel, though not a British subject or resident in British territory, is liable to the forfeitures and also to the penalties imposed by the Slave Abolition Act, 5 Geo. 4. c. 113., if his vessel come within a British port. A judgment of the Vice Admiralty Court of Gibraltar, condemning a ship seized in that port, equipped for the slave trade, the owner being a subject of the Queen of Spain and resident at Cadiz, in the penalty enjoined by the statute for receiving goods on board, affirmed on appeal. *Del Campo and Martinez v. The Queen*, 2 Moore, 15.

### IV. OF THE LIABILITY TO CONDEMNATION OF FOREIGN SHIPS AND CARGOES ENGAGED IN —

#### 1. *Under the general maritime law and the old statutes.*

42. The legislature of this country has pronounced (by stat. 46 Geo. 3. c. 52.) the slave trade to be contrary to the principles of justice and humanity, and abolished it; but it has no right to control any foreign legislature that may think fit to permit to

\* This statute is printed in the Appendix.

† 5. The jurisdiction of the Lords Commis-

sioners is now transferred to the Judicial Committee of the Privy Council by 3 & 4 W. 4. c. 41.

its own subjects the prosecution of such trade. *Primâ facie*, however, the trade is illegal for all countries, and therefore the *onus probandi* lies upon claimants of the property forfeited by such trading, to show that the trade is permitted by the laws of their country. *The Amedie* (1810), 1 Dodson, 84. n., 1 Acton, 240.; *The Fortuna Verissimo* (1811), 1 Dodson, 86.; *The Diana, Berthé* (1813), *Ibid.* 101.

43. An American (neutral) ship, with a cargo of slaves bound to a colony of the enemy from the coast of Africa, condemned as prize to the captors under the Order in Council of 11th November, 1807, forbidding any trade to such colonies, and the cargo condemned as prize to the sole use of his Majesty, such a trade having been notified to the Court as prohibited by the American law. *Ibid.*; *S. P. The Africa, Conolly*, 2 Acton, 1., and *The Nancy, Viall*, *Ibid.*

4. The same decision given in a case in which the capture was made *prior* to the passing of the British Slave Abolition Act (46 Geo. 3. c. 52.). *The Anne, Dennison*, (1810), 2 Acton, 6.

44. A sentence of the Vice-Admiralty Court of Sierra Leone, pronouncing a Swedish vessel and cargo engaged in the slave trade to be forfeited, reversed on appeal to the High Court of Admiralty, on the ground that the vessel was proved to be a Swedish ship, and that such a trading was permitted by the Swedish government, and that this country had no right to enforce its prohibition of the slave trade upon the subjects of other countries countenancing such a trade. *The Diana, Berthé* (1813), 1 Dodson, 95.

45. A Portuguese with his slaves driven by stress of weather to take refuge in a Swedish vessel engaged in the slave trade, countenanced by the Swedish government, *Held*, in the absence of proof to the contrary, not to have been acting in opposition to the laws of his country, as engaged in the slave trade, discountenanced by the Portuguese government. *Ibid.* 102.

46. A French ship, seized as employed in the slave trade, and forcibly resisting the search of the King's cruisers, decreed to be restored, on the ground that there was no proof that such trading was at the time prohibited by the law of France. Sentence of the Vice-Admiralty Court, condemning the ship, reversed. Costs and damages refused only on the ground of the case being *primâ impressionis*. *Le Louis, Forest* (1817), 2 Dodson, 210. 264.

47. On appeal from the decision of the

Vice-Admiralty Court at Sierra Leone, condemning as prize a Spanish ship sailing under the Spanish flag, regularly documented with Spanish papers, and Spanish owned, for being engaged in the slave trade, sentence of condemnation reversed, and restitution pronounced for, there being no proof that the Spanish government had abolished the slave trade, or permitted the seizure of its ships engaged therein. *The San Juan Nepomuceno, Yambi* (1824), 1 Hagg. 265.

48. The slave trade *held* not to be a violation of the Law of Nations, nor a crime by such law. *Le Louis, Forest*, 2 Dodson, 248. 252.

*See post*, No. 206.

(a) *Of the titles of such vessels, and the investigation thereof.*

49. The Court of Admiralty has a right to inquire into the title of a ship captured whilst engaged in the slave trade, and navigating under the flag of a nation permitting such trade. The burden of proof of such property belonging to the subjects of such country lies on the owners, claimants of the vessel seized. *The Donna Marianna*, 1 Dodson, 92.

50. In slave seizures, the flag carried by the slave ship does not fix the national character of the vessel. *The Eagle, Litty*, 1 W. Rob. 246.

(b) *Under colourable transfers between foreigners.*

51. An American vessel which had been colourably sold to a Portuguese, fitted out for the slave trade, and captured, pronounced to be forfeited by reason of such trading, the American laws not protecting such trade, and the sale to the Portuguese owner being fraudulent and collusive. Ship and cargo condemned accordingly. *The Fortuna Verissimo*, 1 Dodson, 90.

(c) *Where transferred colourably only to foreigners, but belonging to British subjects.*

52. An English vessel, which had been colourably transferred to a Portuguese owner, fitted out for the slave trade, and captured in the prosecution thereof, pronounced forfeited by reason of such trading, the sale to the Portuguese owner being *held* to be fraudulent and collusive. Ship condemned. Decision affirmed on appeal, with costs. *The Donna Marianna*, 1 Dodson, 93.

53. Cargo, asserted to belong to a Portuguese owner, and laden on board an English vessel, which had been colourably transferred to such Portuguese owner, fitted out for the slave trade, captured therein, and pronounced forfeited (such transfer being *held* to be fraudulent and collusive), condemned, as being as well as the ship the property of British merchants, the Portuguese owner being *held* to be only colourable owner of the cargo as of the ship, and a party to the fraud and collusion. *Ibid.* 94.

(d) *Of the onus of proof in such cases.*

54. In a question of forfeiture of a foreign vessel, on the ground of her being engaged in the slave trade, the *onus probandi* lies on the claimants, owners of the vessel, to show that that trading is permitted by the country to which the vessel belongs; but on the production of evidence by the claimant raising a presumption thereof, the burden of proof is shifted from the claimant to the captor, who must show that such trade is not countenanced by that country. *The Diana, Berthé*, 1 Dodson, 101.

2. *Of the modern statutory regulations thereon, and the construction thereof.*

55. By 2 & 3 Vict. c. 73. s. 1. any person in the service of her Majesty, under any order of the Admiralty, or of her Majesty's Secretaries of State, may seize, if engaged in the slave trade, any ship not entitled to claim the protection of the flag of any particular nation, and the slaves found in such ships, and bring the same to adjudication in the High Court of Admiralty, or in any British Court of Vice-Admiralty, as if such vessels and cargoes were British-owned; but such Courts shall not proceed to condemn any such vessel not being British, the owners or master whereof shall establish to the satisfaction of the Court that they are entitled to claim the protection of the flag of a state other than Great Britain.\*

56. By s. 4. every such vessel shall be liable to seizure and condemnation under such authority, if, in the equipment thereof, there shall be found any one or more of the articles or circumstances in this sec-

tion mentioned, the existence of which, if proved, shall be considered as *prima facie* evidence of the actual employment of such ship in the slave trade; and the ship and cargo shall be thereupon condemned, unless it be established by satisfactory evidence on the part of the master or owners, that the ship was employed in some legal pursuit, and had on board such articles for legal purposes.

57. By s. 5. vessels condemned under that act may be taken into her Majesty's service, or if not so taken shall be broken up.

58. What quantity of food, in proportion to the number of the crew and the probable length of the voyage, amounts to "an extraordinary quantity," and "beyond what might probably be requisite for the use of the crew," within the meaning of the stat. 2 & 3 Vict. c. 73., so as to be considered *prima facie* evidence of the employment of the vessel in the transport of negroes, for the purpose of consigning them to slavery, considered. 8000 lbs. of farina, with rice and biscuit, for a crew of fifteen hands, for a voyage of not more than two months, *held*, with other circumstances, to amount to such *prima facie* evidence under the statute; and a Portuguese vessel so equipped condemned accordingly (in the Vice-Admiralty Court at Barbadoes) as engaged in the slave trade. Decision affirmed, with costs, on appeal to the Privy Council, notwithstanding evidence there given on behalf of the owners to rebut such presumption. *Guimaraens v. Preston (The Ship Thirteenth of June)*, 6 Jur. 879., 4 Moore, 167.

3. *Of the British Courts of Admiralty having jurisdiction as to—*

59. By 2 & 3 Vict. c. 73. s. 3. the High Court of Admiralty and all British Courts of Vice-Admiralty may adjudicate on any vessel not entitled to the protection of the flag of any particular state, and seized under this act, under the same regulations as are now in force under any act for the suppression of the slave trade by British-owned ships.

60. By s. 6. the provisions of 5 Geo. 4. c. 113., 11 Geo. 4. & 1 W. 4. c. 55., and 1 & 2 Vict. c. 47., as to evidence, the maintenance and condemnation of slaves, bounties, and the jurisdiction of the High Court

\* 6. This statute is printed in the Appendix: such parts thereof as apply to Portuguese vessels have been repealed by 5 & 6 Vict. c. 114.

of Admiralty thereon, and in cases of joint-capture, and for enforcing Vice-Admiralty decrees, &c., are extended to this act.

61. On appeal from a decision of the Vice-Admiralty Court of Sierra Leone (condemning a Swedish vessel engaged in the slave trade as prize) to the Admiralty Instance Court, in which Court, as of appeal, the proceedings had been commenced and carried on by both parties, objections to the jurisdiction of such Court of Appeal overruled. *Held*, that the captors having given issue in such Court, they could not object to its competency to entertain the cause, and that a Court of civil jurisdiction may take cognisance of and exclude a claim, asserted to be founded on principles contrary to general justice, on that ground alone. *The Diana, Berthé*, 1 Dodson, 100.

*See post*, No. 206.

#### V. OF THE TREATIES WITH FOREIGN NATIONS FOR THE SUPPRESSION OF — AND THE STATUTES FOR CARRYING THEM INTO EFFECT.

##### 1. Generally.\*

62. By 5 & 6 *Vict. c. 42*. for the better carrying into effect treaties and conventions with foreign powers for suppressing the slave trade, powers are given to her Majesty to appoint Commissary Judges and Commissioners of Arbitration, who, by *s. 1*. shall have jurisdiction over all cases of seizures under the treaties, and to proceed and give such judgments, and make such orders therein, and do such other acts appertaining thereto, agreeably to such treaties, as if the same were specifically authorized in this act.

63. By *s. 6*. such Judges, &c., may administer oaths, summon witnesses, and send for papers as therein provided.

64. By *s. 7*. persons giving false evidence in any proceedings before such Judges, &c., shall be liable to the pains and penalties of perjury, and may be tried where the offence was committed, or in any adjoining colony of her Majesty having a Court of competent jurisdiction; or in her Majesty's Court of Queen's Bench in England.

65. By *s. 8*. the pendency of proceedings before such Judges, for the condemnation or restitution of any ship or cargo seized under the treaties, shall be a bar to any suit for the recovery thereof or for any damage sustained by such seizure.

66. By 7 & 8 *Vict. c. 26*. her Majesty is empowered to make the requisite provisions, by Order in Council, for carrying into immediate execution all treaties concluded with foreign powers for the suppression of the slave trade.

*See post*, Nos. 76-94. to 98.

##### 2. The Netherlands.

67. By 59 *Geo. 3. c. 16.*, for carrying into effect the treaty of May, 1818, with the Netherlands, for the suppression of the slave trade, the substance of the treaty is set forth, and requisite provision made for carrying it into execution. This treaty is also recited in 5 *Geo. 4. c. 113.*, by which further provision is made for carrying it into execution, and certain additional articles of December, 1822, and January, 1823, are thereby carried into execution, and the 59 *Geo. 3. c. 16.* extended thereto. By 1 & 2 *Vict. c. 41.* provision is made for giving effect to a further additional article of February, 1837, and the 59 *Geo. 3. c. 16.* is extended thereto.

68. By 59 *Geo. 3. c. 16. s. 1.* his Majesty's ships-of-war, duly authorized, may visit, seize, and bring in for adjudication, except in certain seas more particularly enumerated in *s. 3.*, all ships wholly or in part owned by subjects of the Netherlands, and acting contrary to the treaty.

69. By *s. 2.* ships wholly or in part British-owned, and acting contrary to the treaty, are made liable to visitation and search, and to seizure by British or Netherlands' ships duly authorized, and to condemnation by the Mixed Commission Courts established under the treaty.

70. By *s. 4.* British ships-of-war visiting merchant ships-of-war under Netherland convoy shall act in concert with the commander of the convoy.

71. By 59 *Geo. 3. c. 16. s. 11.*, and 5 *Geo. 4. c. 113. s. 60.*, no suit shall be insti-

\* 7. The various treaties between this country and foreign nations for the suppression of the slave trade will be found in *Herlet's Collection of Treaties* (anno 1820-44). The several statutes for carrying them into effect, and which recite the treaties, are collected in the Admiralty statutes compiled by *Godson and Petersdorff* (anno 1846).

8. With reference to the Treaty of Washington

between Great Britain and the United States in August, 1842, for the prevention of the slave trade, see *Wheaton's Law of Nations*, 699. No statute has been passed, or is required, to carry this treaty into operation.

9. On the right of visit claimed by Great Britain with reference to the abolition of the slave trade, see *Ibid.* 585. *et seq.*

tuted in the High Court of Admiralty, or in any other than the Mixed Commission Courts established by the treaty for the restitution or condemnation of, or compensation for, any ship seized under the treaty; and the pendency of any such suit before such Mixed Commission Courts shall be a bar to any proceedings in the High Court of Admiralty, or any other Court; but by 5 Geo. 4. c. 113. s. 61. the High Court of Admiralty, or the Lords of Appeal, shall not be thereby prevented from adjudicating on questions arising out of such seizures, and respecting the rights of the Crown, and of captors and seizors therein.

72. By 5 Geo. 4. c. 113. s. 67. captors of vessels seized under the treaty shall, after condemnation, be entitled to the moiety of the proceeds belonging to his Majesty; and the same shall be distributed like bounties under that act, viz. as his Majesty, by Order in Council or proclamation, may direct.

73. By s. 68. bounties are to be paid to the captors on all slaves on board ships condemned by the Courts of Mixed Commission under the treaty with the Netherlands; and the distribution thereof is to be regulated by his Majesty's proclamation or Orders in Council.

74. By 1 W. 4. c. 55. the rates of bounties on the capture of slaves given by the 5 Geo. 4. c. 113. and 7 & 8 Geo. 4. c. 74. are reduced, and bounties of 5*l.* on each man, woman, and child slave, seized and condemned under the provisions of those acts, are given to the seisor, or to the seisor and governor respectively, in those cases where the governor of any of his Majesty's colonies may be entitled.

75. By s. 2., where slaves shall be seized and be considered liable to forfeiture under the treaties with the Netherlands and the Brazils, but shall not have been pronounced forfeited in consequence of death, sickness, or other inevitable circumstance, the Commissioners of the Treasury may direct payment to the seizors of one moiety of the bounty which would have been due if such slaves had been proceeded against and pronounced forfeited. (*See post, Nos. 94. to 98.*)

76. By 5 Geo. 4. c. 113. s. 71. parties claiming any benefit by way of bounty or share of proceeds, for the seizure of any Netherlands' ship under the treaty, may resort to the High Court of Admiralty for its judgment thereon; and such Court shall have jurisdiction to determine the same, as also any question of joint-capture therein, and to enforce any decree of the

Mixed Commission Courts established, or to be established, in pursuance of treaties with foreign powers, and also the decrees of any Vice-Admiralty Court relating to any seizure under this act.

77. By s. 65. the Lords of the Treasury, if it shall appear to them that the seizure was not improperly made, may order captors' expenses of any seizure to be paid out of the proceeds of seizure.

78. By s. 73. in cases of seizure under this act, in which judgment shall be given against the seisor, or the seizure relinquished, the Lords of the Treasury may direct the payment out of the Consolidated Fund of such costs, damages, and expenses, as the seisor may be liable to pay in respect of such seizure, or any proportionate part thereof.

79. By s. 74. the Commissioners of the Treasury may direct payment out of the Consolidated Fund of any sums awarded by the Mixed Commission Court to be due on account of any unlawful seizure or detention by any of his Majesty's authorized cruisers; but the liability of the seisor to make good such payments, when called upon by order of the Commissioners, shall not be thereby discharged.

80. By s. 77. all the provisions, regulations, forfeitures, and penalties respecting the delivery by prize agents of accounts for examination, and the distribution of prize-money, and the accounting for and paying over the proceeds of prize and the percentage due thereon to Greenwich Hospital, shall be extended to all bounties, and proceeds to be distributed under this act to the officers and crews of his Majesty's ships.

81. By s. 63. persons giving false evidence in any proceedings under the treaty shall be liable to the pains and penalties of perjury, and may be tried for such offence in the place where it was committed, or in any adjacent colony or settlement of his Majesty having a Court of competent jurisdiction, or in his Majesty's Court of King's Bench in England.

### 3. Sweden.

82. By 7 & 8 Geo. 4. c. 54., for carrying into effect the treaty of 6th November, 1824, with Sweden relative to the slave trade, the substance of the treaty is set forth, and requisite provisions made for carrying it into execution.

83. The 1 & 2 Vict. c. 40. carries into execution additional articles to this treaty, to the effect that slave ships condemned

shall be broken up, and extends the provisions of the 7 & 8 *Geo. 4. c. 54.* thereto.

84. By 7 & 8 *Geo. 4. c. 54. s. 1.* his Majesty's ships are authorized to seize Swedish merchant vessels acting contrary to the treaty, except in certain seas therein mentioned, and to proceed against them in the Mixed Commission Court constituted under such treaty.

85. By *s. 2.* British vessels trading in slaves are made subject to seizure by British or Swedish ships duly authorized, and to condemnation in the Mixed Commission Court.

86. By *s. 9.* the pendency of proceedings before such Court shall be a bar to any action in any other Court for restitution or condemnation of, or compensation for, any ship seized or detained under such treaty.

87. *Sect. 8.* makes provision for punishing persons guilty of perjury (similar to that in No. 81. *ante*).

#### 4. Spain.

88. By 58 *Geo. 3. c. 36.* the treaty with Spain of September, 1817, for the prevention of the slave trade, is recited, and requisite provision made for giving it effect. It is also further recited, and additional powers given for its more efficient execution, by 5 *Geo. 4. c. 113.* This treaty is, however, now superseded by that of June, 1835, carried into execution by 6 *W. 4. c. 6.*

89. By 6 *W. 4. c. 6.* the articles of the treaty are recited, and officers commanding ships of his Majesty or of the Queen of Spain duly authorized, are by *s. 1.* empowered to visit and search, within certain limits, merchant ships of either nation suspected of being engaged in the slave trade, and by *s. 2.* ships wholly or in part British-owned are made liable to such seizure and detention, and to adjudication by the Mixed Commission Courts established under the treaty.

90. By *s. 9.* the pendency of any suit before the Court of Mixed Commission under the treaty shall be a bar to any proceedings in any other Court for the recovery, &c., of any ship seized or detained under this act.

91. By *s. 11.* any British vessel equipped as set forth in the treaty shall be deemed, unless proof be given to the contrary, to be engaged in, or equipped for, the slave

trade, and as such liable to the provisions of 5 *Geo. 4. c. 113.*

92. By *s. 12.* bounties of 5*l.* on each slave seized on board British or Spanish ships condemned by the Mixed Commission Courts, are to be paid to the captors by the Treasury, and to be distributed as his Majesty by Order in Council or proclamation shall direct; and by *s. 14.* where slaves have been seized, but, owing to death, sickness, &c., not condemned or delivered over, the Treasury may pay to the captors one moiety of the bounties.

93. By *s. 13.* to entitle captors to receive such bounties, the number of slaves condemned shall be proved by the production to the Commissioners of the Treasury of a copy of the sentence of condemnation duly certified, and a certificate from the proper officer appointed to receive such slaves.

94. By 1 & 2 *Vict. c. 47.\* s. 2.* where any ship seized and condemned under any treaty with foreign powers for the prevention of the slave trade shall be broken up and sold in pursuance of such treaties, a bounty of 1*l.* 10*s.* per ton on the tonnage thereof shall be paid to the captors, in addition to the moiety of the proceeds of any such ship therein-before given to them.

95. By *s. 3.* where any slave ship, having no slaves on board, shall be seized by any of her Majesty's ships duly authorized, and condemned under any of the treaties with foreign powers for the prevention of the slave trade, there shall be paid to the captors an additional bounty on the tonnage of such ship at the rate of 4*l.* per ton; and the tonnage shall be ascertained according to the mode of ascertaining the admeasurement of British ships†, either by the principal officer of the Customs at the port where the ship may be at the time of condemnation, or, in default thereof, by the best evidence which can be obtained, to be certified by the Commissioners by whom such condemnation shall be pronounced; but where ships are seized with slaves on board, in which the bounty on the slaves shall be less than the bounty on the tonnage, the captors may elect to take the bounty calculated on the tonnage in lieu of that payable on the slaves.

96. By *ss. 4. & 5.* such bounties are to be paid out of the Consolidated Fund, and the proof of tonnage to be adduced by the captors to the Commissioners of the Treasury shall be a copy duly certified of the

\* This statute is printed in the Appendix.

† The admeasurement of the tonnage of British ships is regulated by the 8 & 9 *Vict. c. 89. s. 16.*

decree of condemnation, or such other evidence as the Commissioners may deem satisfactory.

97. By *s. 6.* the bounties payable under this or any other act for the seizure of slaves shall be distributed to her Majesty's ships as her Majesty by proclamation or Order in Council shall direct; and all the provisions with regard to prize-money, including all regulations, &c., as to prize agents, the delivery and examination of their accounts, the distribution of prize, and the accounting for and paying over the unclaimed and forfeited shares, and the percentage payable to Greenwich Hospital under any acts now in force, and all penalties and forfeitures to which agents and others are made subject by such acts, are extended to all bounties and proceeds payable to her Majesty's ships under this act.

98. By 3 & 4 *Vict. c. 67. s. 6.* all bounties payable under this or any other acts for the abolition or suppression of the slave trade shall not be chargeable with Treasury or Exchequer fees of any description.

99. By 6 *W. 4. c. 6. s. 16.* the Treasury may direct payment of costs and damages awarded by the Spanish Mixed Commission Court against seizers, but may notwithstanding enforce the captors' liability for the same, and by *s. 17.* the Treasury may pay the seizers' expenses where the seizure is relinquished or judgment is given against the seizer.

100. By *s. 18.* if any of the things specified in the tenth article of the Spanish treaty be found on board any ship proceeded against before the Court of Mixed Commission, neither the master, owner, nor other person interested, shall recover any compensation for such detention, though the ship be not condemned, but such Court may out of the prize fund under its control make a payment to the claimant by way of demurrage.

101. *Sects. 8. & 15.* contain provisions (similar to those in Nos. 80. and 81. *antè*) for punishing persons giving false evidence, and for extending the regulations, &c., as to prize agents to agents under that act.

102. By 5 *Geo. 4. c. 113. s. 71.* parties claiming any benefit by way of bounty or share of proceeds for the seizure of any Spanish ship for violation of treaty or convention may resort to the High Court of Admiralty for its judgment thereon; and such Courts shall have jurisdiction to determine the same, as also any question of joint-capture therein, and to enforce any decree of the Mixed Commission Courts

established or to be established in pursuance of treaties with foreign powers, and also the decrees of any Vice-Admiralty Court relating to any seizure under this act.

103. The sentence of the Mixed Commission Court *Held* to be final and conclusive with respect to the condemnation or acquittal of a vessel seized as engaged in the slave trade contrary to the treaty between this country and Spain. *The Eagle, Littý, 1 W. Rob. 248.*

#### 5. France.

104. By 3 & 4 *W. 4. c. 72.* for carrying into effect two treaties bearing date respectively 30th November, 1831, and 22d March, 1833, with France relative to the suppression of the slave trade, the substance of the treaties is set forth, and requisite provision made for carrying them into execution.

105. By *s. 1.* commanders of French or English ships-of-war duly authorized may exercise, within the limits therein prescribed, the right of searching merchant vessels of either country liable to suspicion and suspected of being engaged in the slave trade, and seize and carry in and deliver over such vessels to the jurisdiction of certain Courts (specified in the treaties) of the country to which the ship belongs.

106. By *s. 2.* on French ships seizing and bringing in ships wholly or in part British-owned, the proceedings for condemnation shall be instituted in the name of his Majesty, and in the Courts of Vice-Admiralty therein enumerated, to whom jurisdiction therein is thereby given.

107. By *s. 3.* British ships so brought in shall, if there be found in their outfit or equipment any of the particulars set forth in the sixth article of the treaty, be deemed, unless proof be given to the contrary, to have been engaged in the slave trade and liable to the provisions of 5 *Geo. 4. c. 113.* relative thereto.

108. By *s. 4.* where any ship wholly or in part British-owned shall be seized and brought in by a French ship under the treaties, and condemned as engaged in the slave trade, the portion of the nett proceeds thereof directed by the treaty to be paid to the French Government shall be so paid, and similar proceeds paid to his Majesty by the French Government shall be paid to such parties as the Lords of the Treasury may appoint for the use of the captors, to be distributed among them in like manner as bounties given by this act.



109. By s. 8. any party claiming any benefit by way of bounty allowed, or share of proceeds of any French vessel confiscated, under this act, shall and may resort to the High Court of Admiralty, which shall have jurisdiction to determine thereon, and also any question of joint-capture arising on any seizure under this act, and to enforce any decrees of Vice-Admiralty Courts relating to any such seizure.

110. By s. 10. costs and damages awarded against seizers for any visit or detention, illegal, or without sufficient cause, or for any abuse thereof, may be paid by the Commissioners of the Treasury, but the seizers' liability shall not be affected thereby, but may be enforced by the Treasury.

111. By s. 11. where judgment shall be given against the seizer, or the seizure relinquished, the Treasury may direct payment of the seizers' expenses.

112. *Sects. 5, 6, 7, and 9.* contain provisions (similar to those in Nos. 92, 93. and 80. *antè*.) relative to payment of bounties on seizure of slaves under this act, and for extending the regulations, &c., as to prize agents to agents under this act. (*And see antè*, Nos. 94. to 98.)

#### 6. Sardinia.

113. By 5 & 6 W. 4. c. 60., for carrying into effect the treaty of August, 1834, between this country, France, and Sardinia (by which Sardinia accedes to the treaties of November, 1831, and March, 1833, between this country and France for the suppression of the slave trade), the substance of the treaty is set forth, and requisite provision made for the execution thereof.

114. By s. 1. commanders of British or Sardinian ships-of-war duly authorized may exercise within the limits therein prescribed the right of searching merchant vessels of either country liable to suspicion and suspected of being engaged in the slave trade, and seize, carry in, and deliver over such vessels to the jurisdiction of certain Courts (specified in the treaties) of the country to which the ship belongs.

115. By s. 2. in case of proceedings under this act against any ship wholly or in part British-owned, her crew, cargo, or slaves, the same shall be instituted and prosecuted in the name of his Majesty by some person duly authorized, and in the Courts of Vice-Admiralty therein mentioned.

116. *Sects. 3, 4, 5, 6, 7, 8, 9, 10, and 11.* contain provisions (similar to those in Nos. 107, 108. 92, 93. 109. 80. 110, 111. *antè*) for subjecting British-owned ships, having

certain articles on board specified in the treaty, to the provisions of 5 Geo. 4. c. 113. for payment and distribution of the proceeds of seizure, for payment of bounties, for enabling parties to resort to the High Court of Admiralty, for extending the regulations as to prize agents to agents under that act, and for payment of costs and damages incurred by or awarded against seizers. (*And see antè*, Nos. 94. to 98.)

#### 7. Denmark.

117. By 5 & 6 W. 4. c. 61., for carrying into effect the treaty of July, 1834, between this country, France, and Denmark (by which Denmark accedes to the treaties of November, 1831, and March, 1833, between this country and France for the suppression of the slave trade), the substance of the treaty is set forth, and requisite provision made for the execution thereof as regards Denmark.

118. The several sections of this act are the same, *mutatis mutandis*, as those contained in the 5 & 6 W. 4. c. 60. above referred to. (*See Nos. 113. to 116.*)

#### 8. The Hans Towns.

119. By 1 & 2 Vict. c. 39., for carrying into effect the treaty of June, 1837, between this country, France, and the Hans Towns, (by which the Hans Towns accede to the treaties of November, 1831, and March, 1833, between Great Britain and France for suppressing the slave trade), the substance of the treaty is set forth, and requisite provision made for the execution thereof, by extending thereto the provisions of the 3 & 4 W. 4. c. 72. for carrying into effect those two treaties. (*See Nos. 104. to 112., antè.*)

120. By ss. 2 and 3. all vessels bearing the flag of Lubec, and appearing by their papers to belong to Lubec, which may be detained under the treaties by her Majesty's cruisers, shall be sent to the ports therein directed for, adjudication, and all slaves found on board such vessels shall be landed at the ports therein directed.

#### 9. Tuscany.

121. By 1 & 2 Vict. c. 83., for carrying into effect the treaty of November, 1837, between this country, France, and Tuscany (by which Tuscany accedes to the treaties of November, 1831, and March, 1833, between this country and France for the suppression of the slave trade), the

substance of the treaty is set forth, and requisite provision made for the execution thereof, by extending thereto all the provisions of the 3 & 4 *W. 4. c. 72.* (*See antè, Nos. 104. to 112.*)

122. *Sects. 2. and 3.* contain provisions (similar to those in No. 120. *antè*) as to the ports where Tuscan vessels shall be sent for adjudication and the slaves on board delivered.

#### 10. *The Two Sicilies.*

123. By 1 & 2 *Vict. c. 84.* for carrying into effect the treaty of February, 1838, between this country, France, and the Two Sicilies (by which the Two Sicilies accede to the treaties of November, 1831, and March, 1833, between this country and France for the suppression of the slave trade,) the substance of the treaty is set forth, and requisite provision made for the execution thereof, by extending thereto all the provisions of the 3 & 4 *W. 4. c. 72.* (*See antè, Nos. 104. to 112.*)

124. *Sects. 2. and 3.* contain provisions (similar to those in No. 120. *antè*) as to the ports where Sicilian vessels shall be sent for adjudication and the slaves on board delivered.

#### 11. *Hayti.*

125. By 5 & 6 *Vict. c. 41.* for carrying into effect the treaty of December, 1839, between this country, France, and the Republic of Hayti (by which the Republic of Hayti accedes to the treaties of November, 1831, and March, 1833, between this country and France, for the suppression of the slave trade,) the substance of the treaty is set forth, and requisite provision made for the execution thereof, by extending thereto all the provisions of the 3 & 4 *W. 4. c. 72.* (*See antè, Nos. 104. to 112.*)

126. By *s. 3.* the portion of the nett produce of the sale of captured vessels and of their cargoes which falls to the share of the British captor shall be only fifty per cent., or one moiety of the produce of the sale thereof.

127. By *s. 4.* the provisions of the 5 *Geo. 4. c. 113.*, the 11 *Geo. 4. & 1 W. 4. c. 55.*, and 1 & 2 *Vict. c. 47.*, relative to persons giving false evidence, to maintaining and providing for captured slaves pending adjudication, to condemning slaves as forfeiture to the Crown, to the manner of disposing of the slaves after adjudication, to rewarding captors with a moiety of the proceeds of ship and cargo, to bounties on

such captures, and to the jurisdiction of the High Court of Admiralty therein, (*see Tit. SLAVES, and Nos. 81. 24. 31. to 35. 94. to 97. antè*) shall be applied, *mutatis mutandis*, to seizures under this act.

128. *Sects. 1. and 2.* contain provisions (similar to those in No. 120. *antè*) as to the ports where Haytian vessels shall be sent for adjudication, and the slaves on board delivered.

#### 12. *Venezuela.*

129. By 3 & 4 *Vict. c. 67.*, for carrying into effect the treaty of March, 1839, with the Republic of Venezuela, for the suppression of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

130. By *s. 1.* British and Venezuelan ships-of-war duly authorized are to exercise, within certain limits, the right of visitation and search, and seizure of merchant vessels of either nation suspected of being engaged in the slave trade.

131. By *s. 2.*, on the seizure and bringing in, by Venezuelan officers, of ships wholly or in part British-owned, the proceedings for adjudication shall be instituted in the Vice-Admiralty Courts therein mentioned, and in the name of her Majesty.

132. By *s. 3.* ships detained under the treaty, and having in their equipment any of the articles specified in the 10th article of the treaty, shall, unless proof be given to the contrary, be deemed to be engaged in the slave trade, and, as such, liable to the provisions of 5 *Geo. 4. c. 113.*

133. By *s. 4.* the portion of the proceeds belonging to her Majesty of any ship seized and condemned under the treaty is to be paid to the appointees of the Treasury, and one moiety thereof, after deducting expenses, shall be apportioned among the captors like bounties under this act.

134. *Sects. 5, 6, 7, 8, 9, 10, 11, and 12.* contain provisions (similar to those in Nos. 92. to 98. 109. to 111. *antè*) for payment of bounties, for enabling parties to resort to the High Court of Admiralty, for extending the regulations, &c. as to prize agents to agents under that act, and for payment of costs and damages incurred by or awarded against seizors.

#### 13. *The Argentine Confederation.*

135. By 5 & 6 *Vict. c. 40.*, for carrying into effect the treaty of May, 1839, between her Majesty and the Argentine Confederation, for the abolition of the slave trade, the substance of the treaty is

set forth, and requisite provision made for the execution thereof.

136. By s. 1. commanders of ships-of-war of her Majesty or of the Argentine Confederation duly authorized may visit and search merchant vessels of either nation suspected of being engaged in the slave trade; and by s. 2. all ships wholly or in part British-owned, suspected of such traffic, with their appurtenances and cargoes, shall be subject to seizure and detention by such ships, and adjudication in the Courts of Mixed Commission established under the treaty.

137. By s. 9. the pendency of any suit before the Courts of Mixed Commission under the treaty shall be a bar to any proceedings elsewhere for the recovery of the vessels detained or for damages sustained thereby.

138. By s. 10. the portion to which her Majesty is entitled of the proceeds of vessels seized by her Majesty's ships duly authorized and condemned under the treaty, shall be paid to the captors, and distributed like bounties under this act, viz. as directed by her Majesty's Orders in Council or proclamation.

139. By s. 19. if any of the things specified in the 8th article of the treaty shall be found on board any vessel detained and brought in under the treaty, no compensation or damages for such detention shall be recoverable, notwithstanding the Mixed Commission Court shall not pronounce any sentence of condemnation.

140. *Sects.* 8. 11, 12, 13, 14, 15, 16, 17, and 18. contain provisions (similar to those in Nos. 81. 92. to 98. 109. to 111. *antè*) for punishing persons giving false evidence, for payment of bounties, for enabling parties to resort to the High Court of Admiralty, for extending the regulations, &c. as to prize agents to agents under this act, and for payment of costs and damages awarded against, or incurred by, seizers.

#### 14. Bolivia.

141. By 6 *Vict. c.* 14., for carrying into effect a treaty of September, 1840, between her Majesty and the Republic of Bolivia, for the abolition of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

142. The provisions of this statute are the same, *mutatis mutandis*, as those contained in 5 & 6 *Vict. c.* 40. (*See antè*, Nos. 135. to 140.)

#### 15. Uruguay.

143. By 6 *Vict. c.* 46., for carrying into effect the treaty of July, 1839, between her Majesty and the Oriental Republic of Uruguay for the abolition of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

144. The provisions of this statute are the same, *mutatis mutandis*, as those contained in the 5 & 6 *Vict. c.* 40. (*See antè*, Nos. 135. to 140.)

#### 16. Texas.

145. By 6 *Vict. c.* 15., for carrying into effect a treaty of November, 1840, between her Majesty and the Republic of Texas for the suppression of the African slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

146. By 6 *Vict. c.* 15. s. 1. commanders of ships-of-war of her Majesty or of the Republic of Texas, duly authorized, may visit and search, within the waters therein described, any merchant-vessel of either nation, suspected of being engaged in the slave trade, and on sufficient grounds detain and without delay deliver over any such vessel, her master, crew, slaves, and cargo, to the authorities appointed under the treaty, and to one of the jurisdictions in the instructions to the treaty mentioned, in order that proceedings may be instituted according to the laws of the two countries, and all commanders of her Majesty, in the exercise of such rights, shall comply with the provisions and instructions of the treaty relating thereto.

147. By s. 2. in case of officers of the Republic of Texas detaining vessels wholly or in part British-owned, every proceeding instituted in regard thereto, and to her crew, cargo, and slaves, shall be conducted in the name of her Majesty by some person duly authorized, in the Courts of Vice-Admiralty therein mentioned.

148. By s. 3. any such British-owned ship shall, unless proof be given to the contrary, be held to be engaged in the slave trade, or fitted out for such traffic, and equipped and employed for the objects declared unlawful by the 5 *Geo. 4. c.* 113., if any of the particulars specified in the 9th article of the treaty shall be found in her outfit or equipment, or on board of her.

149. By s. 4. in case any such ship shall be seized by any officer of the Republic of

Texas, and be, with her cargo, confiscated according to the laws of this country and the provisions of the treaty, her Majesty may direct the proceeds arising from the sale thereof to be paid to the Texan Government, according to the 10th article of the treaty, and the proceeds arising from the sale of any ship and cargo agreed to be paid to her Majesty's Government under the same article shall be paid to such person as the Commissioners of the Treasury may appoint, for the use of the captors, and the same, after deducting expenses, shall be distributed amongst the captors like bounties under this act.

150. *Sects. 5, 6, 7, 8, 9, 10, 11, and 12.* contain provisions (similar to those in Nos. 92. to 98. and 109. to 111. *anté*) for payment of bounties, for enabling parties to resort to the High Court of Admiralty, for extending the regulations, &c. as to prize agents to agents under this act, and for payment, by the Commissioners of the Treasury, of costs and damages awarded against, or incurred by, seizers.

17. *Austria, Prussia, and Russia.*

151. By 6 & 7 *Vict. c. 50.*, for carrying into execution the treaty of December, 1841, between this country and Austria, Prussia, and Russia, for the suppression of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

152. By *s. 1.* any officer commanding any ship-of-war of this country, Austria, Prussia, or Russia, duly authorized under the treaty, within the waters described, and according to the provisions contained in the treaty, may visit and search any British, Austrian, Prussian, or Russian merchant vessel (except certain Russian vessels therein mentioned) suspected of being engaged in or fitted out for the slave trade, and on sufficient grounds detain and deliver over without delay any such vessel, her master, slaves, cargo, and crew, to the authorities appointed under the treaty, and to one of the jurisdictions therein mentioned, in order to proceedings being instituted according to the laws of the respective countries; and by *s. 2.* all such ships, wholly or in part British-owned, shall be subject to search and detention by such ships, and to condemnation or other judgment by the Courts of Admiralty in her Majesty's dominions.

153. By *s. 3.*, on such ships being so seized and delivered over, the proceedings instituted in regard thereto shall be con-

ducted in the name of her Majesty by some person duly authorized, and in her Majesty's Courts of Vice-Admiralty therein mentioned.

154. By *s. 4.* if any of the particulars specified in the 9th article of the treaty shall be found in the outfit, equipment, or on board of any such merchant ship, such vessel shall, unless proof be given to the contrary, be deemed to have been engaged in and fitted out for the slave trade, within the meaning of the 5 *Geo. 4. c. 113.*

155. By *s. 5.* in case any such merchant ship shall be seized by any officer duly authorized of Austria, Prussia, or Russia, and confiscated under the treaty and by the laws of this country, the proceeds of sale thereof shall be paid to the nominee of the Commissioners of the Treasury.

156. By *s. 6.* the High Court of Admiralty of England and all her Majesty's Courts of Vice-Admiralty, may take cognizance of and try any such British vessel detained or captured within the limits therein aforesaid under any such authority, and may condemn any such vessel, and adjudge as to the slaves therein in like manner, and under such rules, as are contained in any act in force for the suppression of the slave trade by British-owned ships.

157. By *s. 8.* the dependence of any suit or proceeding for the adjudication on any such ship, slaves, or cargo, seized or detained under the treaty, in the High Court of Admiralty, or any Vice-Admiralty Court, shall be a bar to any proceedings elsewhere instituted for the recovery thereof, or for any damage sustained thereby.

158. By *s. 9.* any ship condemned under such authority may be taken into her Majesty's service at a proper price; and if not so taken, shall be broken up, the materials sold, and the proceeds paid to the nominee of the Commissioners of the Treasury.

159. By *s. 10.* where any ship shall be seized by any of her Majesty's ships, duly authorized, and condemned under the treaty, the captors shall be paid one moiety of the nett proceeds, after deducting expenses, which portion shall be distributed like bounties under this act, *viz.* as directed by her Majesty by Order in Council or proclamation.

160. By 6 & 7 *Vict. c. 50. s. 11.* bounties of *5*l.** for each slave seized on board any ship taken and condemned under the treaty shall be paid to the seizers in such manner and proportions as her Majesty shall, by Order in Council or proclamation,

direct; and by *s.* 18., where any such slaves shall not have been delivered over in consequence of death, sickness, or other inevitable circumstance, a moiety of the bounty which would otherwise have been due thereon may be paid to the captors.

161. By *s.* 12. where any ship so seized and condemned under the treaty shall have been broken up and sold, a further bounty on the tonnage thereof, at the rate of thirty shillings a ton, shall be paid to the seizers.

162. By *s.* 13. where no slaves are on board a ship so seized and condemned, an additional bounty of 4*l.* a ton on the tonnage thereof shall be paid to the captors, and the mode of admeasurement of the tonnage is therein directed, and in all cases of seizures in which the bounty on the slaves shall be less than that on the tonnage, the captors may elect to take the bounty on the tonnage in lieu of that on the slaves.

163. By *s.* 15. such bounties, as also all bounties payable under that or any acts for the abolition or suppression of the slave trade, shall not be charged with Treasury or Exchequer fees of any description.

164. By *s.* 16. to entitle seizers to receive such tonnage bounties the tonnage of the ship so seized and condemned shall be proved to the Commissioners of the Treasury by producing a certified copy of the decree of condemnation, or such documentary or other evidence as they may deem satisfactory.

165. By *s.* 17. to entitle seizers to receive such slave bounties the number of slaves seized and condemned shall be proved to the Commissioners of the Treasury by producing a certified copy of the decree of condemnation and a certificate of the officer appointed to receive the slaves.

166. *Sec.* 23. provides that no compensation shall be awarded when any articles specified in the 9th article of the treaty shall be found on board any vessel seized and detained under this act.

167. *Sec.* 7. 19, 20, 21, and 22. contain provisions (similar to those in Nos. 81. 109. 80. 110. and 111. *antè*.) for punishing persons giving false evidence, for enabling parties to resort to the High Court of Admiralty, for extending the regulations, &c., as to prize agents to agents under this act, and for payment of costs and damages incurred by, or awarded against, seizers.

#### 18. Mexico.

168. By 6 & 7 *Vict. c.* 51. for carrying into effect the treaty of February, 1841, between her Majesty and Mexico for the abolition of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

169. The provisions of this statute are the same, *mutatis mutandis*, (omitting *ss.* 3. and 5.) as those contained in 6 & 7 *Vict. c.* 50. (*See antè*, Nos. 151. to 167., omitting Nos. 153. and 155.)

#### 19. Chile.

170. By 6 & 7 *Vict. c.* 52., for carrying into effect the treaty of January, 1839, between this country and the Republic of Chile, for the abolition of the slave trade, the substance of the treaty is set forth, and requisite provision made for the execution thereof.

171. By *s.* 1. officers commanding any ship of her Majesty or of the Republic of Chile, of the rank therein mentioned, duly authorized, may visit and search any merchant vessel of either nation suspected of being engaged in, or fitted out for, the slave trade, and search and detain such vessel, her master, crew, slaves, and cargo, for the purpose of her being brought to adjudication before one of the Mixed Commission Courts to be established under the treaty; and by *s.* 3. all such ships wholly or in part British-owned, their appurtenances and cargoes, shall be subject to search and detention by British or Chilian ships-of-war, duly authorized under the treaty, and to condemnation in the Mixed Commission Courts under the treaty.

172. By *s.* 9. the pendency of any suit before the Commissioners under the treaty shall be a bar to any proceedings elsewhere for the recovery of the ship or cargo, or for any damage sustained by the capture thereof.

173. By *s.* 10., if any of the particulars specified in the 9th article of the treaty shall be found in the outfit and equipment of any vessel wholly or in part British-owned, such vessel, unless proof be given to the contrary, shall be deemed to have been engaged in or fitted out for the slave trade, and equipped for the purposes declared unlawful by 6 *Geo. 4. c.* 113.

174. By *s.* 11. vessels condemned under the treaty may be taken into her Majesty's service on payment of a proper price for the same; and if not so taken, are to be broken up and sold, and the proceeds paid to the nominee of the Commissioners of the Treasury.

175. By s. 12. seizers of condemned vessels shall be entitled to the proceeds thereof belonging to her Majesty, to be distributed like bounties under this act, viz. as her Majesty shall by Order in Council or proclamation direct.

176. By s. 25. if any of the things specified in the 9th article of the treaty shall be found on board any vessel detained and brought in under the treaty, no compensation or damages for such detention shall be recoverable, notwithstanding the Mixed Commission Court shall not pronounce any sentence of condemnation.

177. Sects. 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, contain provisions (similar to those in Nos. 81. 160. to 165. 109. 80. 110, 111. *antè*) for punishing persons giving false evidence, for payment of bounties, for enabling parties to resort to the High Court of Admiralty, for extending the regulations, &c. as to prize agents to agents under this act, for payment of costs and damages incurred by, or awarded against, seizers.

#### 20. Portugal.

178. By 58 Geo. 3. c. 85., for carrying into effect the treaty of January, 1815, with Portugal, for the suppression of the slave trade, the treaty is recited, and requisite provision made for giving it effect. This act is amended by 59 Geo. 3. c. 17., reciting the additional convention of July, 1817, to such treaty, and both acts are further amended by 5 Geo. 4. c. 113., which also recites such treaty and convention. Further provision with reference to the seizure of Portuguese ships engaged in the slave trade is made by 2 & 3 Vict. c. 73., but repealed by 5 & 6 Vict. c. 114. *Semble*, however, that the before mentioned treaty and convention, and the acts for giving effect thereto, are superseded by the treaty of July, 1842, the substance of which is set forth, and provision made for the execution thereof, by the 6 & 7 Vict. c. 53.

179. The provisions of this statute are, with the additions *infra*, the same, *mutatis mutandis*, as those contained in the 6 & 7 Vict. c. 52. (*See antè*, Nos. 170. to 177.)

180. By 6 & 7 Vict. c. 53. s. 12., on condemnation of any vessel in the Court of Mixed Commission, the slaves on board

shall be delivered over to the government of the seizer.

181. By s. 13., in the British colonies where the Courts of Mixed Commission are established, and where the existing laws are more favourable to the slaves, such laws are to supersede the special regulations in the treaty, and by s. 14. provision is made for similar substitutions in other British colonies.

182. Prior to the stat. 6 & 7 Vict. c. 53. the instructions annexed to the convention with Portugal, embodied in 5 Geo. 4. c. 113., implied that the seizures of Portuguese slave ships were to be made under the personal direction of the commander of a ship-of-war: *Held*, therefore, that a seizure by an open boat, which with its crew belonged to a King's ship, and was commanded by the lieutenant thereof, with written instructions from the commander to make seizures of slave ships, but which boat actually put off from an unauthorized tender, and at a distance of 1500 miles from the King's ship, did not entitle that ship to a moiety of the proceeds, or to the bounties under the stat. 5 Geo. 4. c. 113., the seizure being held not to have been made under the personal superintendence of the commander of the King's ship, nor from an authorized tender, though the ship had been condemned by the Mixed Commission Court at Sierra Leone as seized by the tender to the King's ship. *The Donna Barbara, Luiz*, 2 Hagg. 366. On appeal, however, to the Delegates, the decision was reversed, on the ground that the sentence of the Court of Mixed Commission was conclusive as to the legality of the seizure. 3 Hagg. 446., Appendix C.

#### 21. Brazil.

183. By 7 & 8 Geo. 4. c. 74. (amended by 1 W. 4. c. 55., and 8 & 9 Vict. c. 122.) for carrying into execution the treaty of November, 1826, between this country and Brazil for the regulation and final abolition of the African slave trade, the treaty is declared to be the same as that between this country and Portugal of July, 1817; and requisite provision is made for carrying the same into execution, by extending thereto the provisions of 58 Geo. 3. c. 85., 59 Geo. 3. c. 17., and 5 Geo. 4. c. 113.\*

\* The Brazilian Government has notified to the British Government that the convention under which the Mixed British and Brazilian Commission Courts were established has expired, and those Courts have been abolished accordingly. The British Govern-

ment, however, has protested against the right of the Brazilian Government under the treaties to take such a course; and in consequence of the latter having so done, the stat. 8 & 9 Vict. c. 122. above referred to has been passed.

184. By 8 & 9 *Vict. c. 122. s. 4.* the High Court of Admiralty, or any Court of Vice-Admiralty, may adjudicate on seizures of ships under the Brazilian treaty, for being engaged in the slave trade, in like manner as on British vessels seized as engaged in such trade.

185. By *s. 6.* vessels so condemned may be taken into her Majesty's service on payment of a proper price for the same; and if not so taken, shall be broken up.

186. By *s. 8.* so much of the provisions of 5 *Geo. 4. c. 113.*, 1 *W. 4. c. 55.*, 1 & 2 *Vict. c. 47.*, and 5 & 6 *Vict. c. 91.*, as relate to evidence, bounties, maintenance and condemnation of slaves, the jurisdiction of the High Court of Admiralty, and the whole of the 5 & 6 *Vict. c. 91.*, are extended to this act. (*See Tit. SLAVES, and ante, Nos. 15. and 28. to 37.*)

187. A Brazilian vessel employed in the slave trade (treaties for the suppression thereof having been executed between the governments of Great Britain and the Brazils) is to be considered in the light of an enemy. *The Sociedade Feliz, Joao de Souza Campos*, 1 *W. Rob.* 909.

#### VI. STATUTORY REGULATIONS FOR THE EAST INDIES AS TO —

188. By 3 & 4 *W. 4. c. 85. s. 88.* slavery in the territories of the East India Company is to be mitigated and abolished as soon as practicable.

189. By 5 & 6 *Vict. c. 101.* the powers and authorities given by 5 *Geo. 4. c. 113.* to governors and others for the suppression of the importation of slaves into British colonies are extended to governors of presidencies under the government of the East India Company.

#### VII. WHO MAY BE SEIZORS.

190. By 5 *Geo. 4. c. 113. s. 43.* all ships, slaves, and goods which may become forfeited under this act may be seized by any officers of his Majesty's Customs or ships-of-war, or of the army or navy, and by all governors\* or persons having the chief command of any of his Majesty's colonies, &c., and all persons deputed and authorized by such governors or commanders-in-chief.

#### VIII. OF THE RIGHTS, DUTIES, AND RESPONSIBILITIES OF SEIZORS.

##### 1. Generally.

191. By 2 & 3 *Vict. c. 73. s. 2.* no action shall be maintainable in any of her Majesty's Courts against any person for seizing, &c., under this act, vessels engaged in the slave trade.

192. By 8 & 9 *Vict. c. 93.* (regulating the trade of the British possessions abroad) *s. 88.* all persons authorized to make seizures under 5 *Geo. 4. c. 113.* shall, in making and prosecuting any such seizures, have the benefit of the provisions granted to persons authorized to make seizures under this act.

193. The principal of these provisions are *ss. 81. and 83.* The Judge may certify that there was probable cause of seizure, and the claimant shall not in such event be entitled to costs, nor the seisor liable to any action thereon.

194. *Sect. 79.* A month's notice shall be given to seizors before the institution of any suit against them in respect of acts done under this act.

195. *Sect. 80.* Every such action shall be brought within three months of the cause thereof accruing.

196. *Sect. 82.* A seisor may tender amends in bar of any action against him.

197. By 8 & 9 *Vict. c. 93.* (regulating the trade of the British possessions abroad) *s. 89.* all penalties and forfeitures created by 5 *Geo. 4. c. 113.* shall (except in cases specially provided for by such act) belong to such persons as are authorized under this act to make seizures, in such shares, and shall be sued for, recovered, and applied in such manner, by the same means, and subject to the same rules, &c., as penalties and forfeitures under this act.

198. The principal regulations with respect to the recovery and distribution of penalties and forfeitures under this act (8 & 9 *Vict. c. 93.*) are inserted in *Nos. 12. 20. and 27. ante.*

199. An application was made to the Court of Admiralty by the agent of the seizors for payment out to him on their behalf of seven eighths of the proceeds of a capture of a Brazilian schooner (transmitted to this Court under a Treasury warrant), supported by affidavits of the agent and two processes or authentic copies of proceedings in the Vice-Admiralty Court of Sierra

\* 10. By 5 *Geo. 4. c. 113. s. 38.* a governor *de facto* shall be a governor within the meaning of that act.

Leone, from which it appeared that the vessel had been condemned in that Court as engaged in the slave trade, and pronounced forfeited to the seizers, but that, on a claim by the Brazilian Consul on behalf of Brazilian subjects for the goods on board as taken from another vessel, the condemnation had been rescinded and one eighth decreed to the seizers, the residue having been directed to remain as droits of Admiralty subject to claims in due time, and that in further proceedings instituted by the seizers against such seven eighths forfeiture thereof had been pronounced for, but they were directed to remain as droits. The Court, there being no appeal or suit in this Court in respect of such decrees, rejected the application, the seizers not having shown a legal title to the property, nor that the consent of the Admiralty, entitled thereto as droits of Admiralty, had been obtained. A subsequent motion, supported by evidence that the Crown did not oppose such application, refused on the same ground of defective title. *The Marianna, Dos Santos*, 3 Hagg. 206.

## 2. As to costs.

200. By 5 Geo. 4. c. 113. s. 65. the Lords of the Treasury, if it shall appear to them that the seizure was not improperly made, may order captors' expenses of seizure to be paid out of proceeds of seizure.

201. By 5 & 6 Vict. c. 91. s. 6. in cases of seizure under 2 & 3 Vict. c. 73., where judgment shall be given against the seizer or the seizure relinquished, the Treasury may direct the payment of the seizers' expenses.

202. By 8 & 9 Vict. c. 93. (which regulates the trade of the British possessions abroad, but the provisions of which, for the benefit of seizers, are by s. 88. extended to persons authorized to make seizures under 5 Geo. 4. c. 113.) ss. 81. and 83. the Judge may certify that there was probable cause of seizure, and in such event the claimant shall not be entitled to costs, nor the seizer be liable to any action in respect of such seizure.

203. The Court, having on appeal reversed a sentence of condemnation of a foreign ship for being engaged in the slave trade and decreed restitution, refused to condemn the captor, a British officer, in costs and damages unless satisfied that he would be indemnified by the British government. *The San Juan Nepomuceno, Yambi*, 1 Hagg. 269, 270.

## 3. As to costs and damages.

204. By 5 Geo. 4. c. 113. s. 35. in cases of restitution, costs and damages may be awarded by the Court where the capture or seizure, or the prosecution or appeal thereon, shall appear unjustifiable.

205. By sect. 73. where judgment shall be given against the seizer, or the seizure shall be relinquished, the Treasury may direct the payment of the costs and damages to which the seizer may be liable in respect of such seizure, or any proportionate part thereof.

206. A foreigner, who is not prohibited from carrying on the slave trade by the laws of his own country, may, in an English Court of judicature, recover damages which may have been sustained by him in respect of a wrongful seizure by a British subject of a cargo of slaves on board a ship employed by him in carrying on the African slave trade. *Madrazo v. Willes*, 3 B. & A. 353.; and see *Farmer v. Tegg*, 7 T. R. 186.

## IX. OF JOINT-SEIZORS.

207. By 5 Geo. 4. c. 113. s. 71. parties claiming any benefit by way of bounty or share of proceeds for the seizure of any Spanish, Portuguese, or Netherlands ships, under the treaties with those powers, may resort to the High Court of Admiralty for its judgment thereon, and such Court shall have jurisdiction to determine the same, as also any question of joint-capture therein, and to enforce any decree of the Mixed Commission Courts established or to be established in pursuance of treaties with foreign powers, and also the decrees of any Vice-Admiralty Court relating to any seizure under this act. By 2 & 3 Vict. c. 73. s. 6. the provisions of 5 Geo. 4. c. 113. are extended to seizures under that act.

208. By 5 & 6 Vict. c. 91. s. 5. the High Court of Admiralty may adjudicate on any questions of joint-capture arising out of any seizures under 2 & 3 Vict. c. 73., and enforce any decree of any Vice-Admiralty Courts relative to any such seizures.

209. The principles of joint-capture in prize cases apply to vessels associated in the capture of ships engaged in the slave trade. *The Aviso, Da Silva*, 2 Hagg. 31.

210. A vessel having been condemned as engaged in the slave trade in a Vice-Admiralty Court under proceedings instituted by the actual captor in his own name only, and an asserted joint-captor having memorialised the Treasury and been informed that he must establish his claim in the Court



of Admiralty, monition, at his petition, decreed against the officers and crew of the actual captor to show cause why the asserted joint-captor should not be admitted to share as such. *Ibid.*

211. The Admiralty having given orders to a commander to take his vessel to the coast of Africa for the express purpose of capturing vessels illegally engaged in the slave trade, and for that purpose only, and having subsequently ordered another commander to put himself and his vessel under the orders of the commander of the first vessel, *Held*, that such subsequent order to the second commander was a special order pointing to employment in the suppression of the slave trade. *Ibid.* 34.

212. An allegation of an asserted joint-captor of a slave ship, pleading association with the actual captor in the service of suppression of the slave trade, previous sight of the slave ship, communication thereof to the actual captor, chase, sight at the time of capture, subsequent assistance in towing the slaves into port, admitted to proof as sufficient, if proved, to constitute a claim of joint-capture. *Ibid.* 31.

213. A vessel which had chased a slave ship into a situation from which she could not escape, and then being herself forced by a leak to abandon the chase, informed another vessel thereof, who in consequence effected the capture, *Held* not entitled as joint-captor. Costs allowed. *The Orestes*, 2 Hagg. 38. n.

214. A slave ship carrying the American flag, and asserting herself to be American owned, was seized by a Queen's ship, the A., but not detained. She was afterwards seized by another Queen's ship, B., the commander of which put a prize-master and crew on board and sent her for adjudication and condemnation. The Mixed Commission Court having refused to adjudicate thereon, the prize-master falling in with the A. applied to the commander for instructions. He took him and the crew out of the slave ship, the master of which afterwards admitted her to be Spanish and not American property, whereupon the commander of the A. seized her and put a prize-master and crew on board. The slave ship afterwards foundered at sea, but the commander of the A. took proceedings in the Mixed Commission Court for and obtained condemnation of the vessel to him as seisor. He subsequently applied to and obtained from the Treasury the usual bounty on the tonnage of the ship under 5 Geo. 4. c. 113. A claim to such bounties by the commander

and crew of the B. as the real seizors wrongfully dispossessed by the A. pronounced for, the Court holding that it was not competent to the commander of the A. to dispossess the prize-master and crew of the B., and that, having so removed them without legal authority, he was not entitled to any benefit from the condemnation of the vessel, but the costs incurred by the commander of the A. in procuring the sentence of condemnation by the Mixed Commission Court allowed him. *The Eagle, Litty*, 1 W. Rob. 236.

215. The rules which govern cases of joint-capture in prize causes are to be applied to cases of joint-capture of slave vessels, though essential distinctions will occasionally be found, precluding the application of the same identical rules. For instance, the rule in prize cases that a claim for joint-capture cannot be supported by the evidence of releasing witnesses only ought not to be applied to cases of slave-capture, the foundation of the rule in prize cases being that disinterested evidence is always to be had from those on board the prize; but in slave captures, where the condemnation takes place before the Mixed Commission Court, such evidence could not possibly, in the great majority of cases, be obtained. Claim of joint-capture of a slave ship, supported by the evidence of releasing witnesses alone, pronounced for. *The Sociedade Feliz, Joao De Souza Campos*, 1 W. Rob. 303., 2 W. Rob. 155. 159., 6 Jur. 134., 7 Jur. 956., 1 Notes of Cases, 286., 2 Notes of Cases, 430.

216. Claim of joint-capture of a slave ship preferred by a Queen's ship, in sight of the prize at the commencement of the chase and probably at the time of capture, but who did not chase, though able to do so, having been ordered by the captor to remain at anchor and pick up his boats, pronounced for, upon a combination of all the circumstances of the case, notwithstanding a declaration of the commander of the vessel claiming as joint-captor, but subsequent to the receipt of such orders, that the prize was not a slave ship, and that no other union or association was proved. *Ibid.* 2 W. Rob. 155., 7 Jur. 956., 2 Notes of Cases, 430.

217. *Quere*, how far a Queen's ship, which was bound not to chase a slave vessel without an order from the senior officer of the station, and which, though it saw the prize at the commencement of the chase, remained at anchor as it were by compulsion, in consequence of no such

order having been given by the senior officer, the actual captor, is on such account entitled to share as joint-captor. *Ibid.*

218. In a case of joint-capture of a slave vessel, an allegation of the asserted joint-captor pleading sight and cooperation, but insufficiently to found the claim, directed to be reformed under suggestions thrown out by the Court, the circumstances of the case inducing the suspicion of a sufficient case to found the claim, if rightly pleaded. *Ibid.* 1 W. Rob. 303., 6 Jur. 134., 1 Notes of Cases, 286.

219. A joint-captor of a slave vessel is entitled to share as well in bounty money as in the ship, her stores, and every thing in her of value. *The Aviso, Da Silva*, 2 Hagg. 39, 40.

See FLAG SHARE, JOINT-CAPTURE.

#### X. OF THE DUTIES AND RESPONSIBILITIES OF AGENTS OF SEIZORS.

220. By 5 Geo. 4. c. 113. s. 77. all the provisions, regulations, forfeitures, and penalties respecting the delivery by prize agents of accounts for examination, and the distribution of prize money, and the accounting for and paying over the proceeds of prize, and the percentage due thereon, to Greenwich Hospital, shall be extended to all bounties and proceeds to be distributed under this act to the officers and crews of his Majesty's ships, whether paid to prize agents or to other persons authorized to receive the same for the benefit of such parties.

221. By 1 & 2 Vict. c. 47. s. 6., and 5 & 6 Vict. c. 91. s. 3., all the provisions with regard to prize money, including all regulations, &c., as to prize agents, under any acts now in force, and all penalties and forfeitures to which agents and others are made subject by such acts, are extended to all bounties and proceeds payable to her Majesty's ships under these acts and under 2 & 3 Vict. c. 73.

222. An attachment for contempt of Court decreed against a brig-of-war's agent residing in the island of Grenada, for non-payment into the Mixed Commission Court at Sierra Leone of the proceeds of a slave capture, as directed by a monition from the Court of Admiralty. *The Florida, Provença*, 2 W. Rob. 97.

See PRIZE AGENTS.

#### XI. OF APPEALS IN SLAVE SEIZURES.

##### 1. Generally.

223. Sentence having been given in a Vice-Admiralty Court decreeing restitu-

tion, but without costs and damages, of a ship seized as engaged in the slave trade, an appeal therefrom by the claimant, in respect of the refusal of costs and damages, pronounced against, and the appellant condemned in 130*l.* *nomine expensarum* of the respondent, the seizor. *The Woodbridge, Munnings*, 1 Hagg. 63.

224. Although the 5 Geo. 4. c. 113. s. 71., which gives to the High Court of Admiralty the power of deciding on a question of bounties for the seizure of slaves, under the treaties therein set forth, does not provide for any appeal from the decree of that Court, an appeal is incidental to the jurisdiction. An appearance, therefore, under protest, to an inhibition and citation in such appeal in the Court of Delegates overruled. *The Donna Barbara, Luiz*, 3 Hagg. 446. Appendix C.

225. A person, though convicted of felony under the Slave Abolition Act, 5 Geo. 4. c. 113., held to be capable of prosecuting an appeal against a sentence in the Vice-Admiralty Court for penalties, though his conviction in the Criminal Court was previous to the civil sentence, and he was at the time of the appeal undergoing the punishment awarded him. A protest against his right to appeal, on the ground of such conviction, overruled. *Sherwill v. The King (The Cazador)*, 2 Moore, 1.

See APPEALS.

##### 2. Practice in —

##### (a) With reference to inhibitions.

226. By 5 Geo. 4. c. 113. s. 29. in appeals from sentences of Vice-Admiralty Courts in respect of matters under this act, the inhibition shall be applied for and decreed within twelve months from the date of the sentence, except as to Vice-Admiralty Courts at and to the eastward of the Cape of Good Hope, in which cases eighteen months shall be allowed.

227. The appellant from a decree of condemnation pronounced in a Vice-Admiralty Court abroad, westward of the Cape of Good Hope, against a vessel engaged in the slave trade, contrary to the provisions of the 5 Geo. 4. c. 113., must, in compliance with the 29th section of that act, procure an inhibition to issue within twelve months after that decree, or he will be barred his appeal; and although now by the 3 & 4 W. 4. c. 41. the appellate jurisdiction is vested in the Judicial Committee of the Privy Council upon the petition of appeal being referred by the Queen, and until such reference no

Court exists which can grant an inhibition, yet where the appellant prosecuted his petition of appeal to the Queen twenty-five days before the expiration of the twelve months, but her Majesty did not refer the appeal to the Judicial Committee until the day before the twelve months expired, and notice of such reference was not given by the clerk of the Council until two days after the twelve months expired, when the appellant applied for and obtained an inhibition: *Held*, that though, at the time the 5 Geo. 4. passed, any surrogate of the High Court of Admiralty could on the appellant's application have issued an inhibition, yet that notwithstanding the alteration of the practice, the 29th section of the 5 Geo. 4. was still imperative, and that the party was barred of his appeal. *Logan v. Burslem (The Guiana)*, 7 Jur. 1., 4 Moore, 284.

228. The 29th section of the 5 Geo. 4. c. 113., directing that no appeals shall be prosecuted from any sentence of any Court of Admiralty or Vice-Admiralty west of the Cape of Good Hope, touching any matters in that act, unless an inhibition be decreed within twelve months from the time of the sentence being pronounced, applies as well to foreigners as British subjects; and although Parliament cannot legislate for foreigners out of the dominions, yet it can fix a time within which application must be made for redress to the tribunals of the empire, which being matter of procedure becomes the law of the forum, and by which all mankind are bound. On appeal by foreign owners of cargo condemned in the Vice-Admiralty Court at Sierra Leone in the penalties under the statute, as engaged in the slave trade, the inhibition in which was not extracted within the twelve months; protest against the appeal by reason thereof pronounced for, and the appeal dismissed. *Lopez v. Burslem (The Guiana)*, 7 Jur. 1119., 4 Moore, 300.

229. By 8 & 9 Vict. c. 93. (which regulates the trade of the British possessions abroad, but the provisions of which are by s. 89. extended to all penalties and forfeitures created by 5 Geo. 4. c. 113.) s. 86. no appeal shall be prosecuted from any decree of any of her Majesty's Courts in America touching any penalty or forfeiture under this act, unless the inhibition be applied for and decreed within twelve months from such decree.

(b) *Of proceedings in the Court below pending—*

230. By 8 & 9 Vict. c. 93. (which regulates the trade of the British possessions abroad, but the provisions of which are by s. 89. extended to all penalties and forfeitures created by 5 Geo. 4. c. 113.) s. 87. in any case of proceedings in any Court of Vice-Admiralty or other competent Court abroad, against any ship or goods for the recovery of any penalty or forfeiture under this act, the execution of any decree of any such Court restoring such ship or goods to the claimant, shall not be suspended by reason of appeal, provided the party appellate give sufficient security, to be approved of by the Court, to deliver such ship or goods, or the full value thereof, to be ascertained by agreement between the parties, or else by appraisement under the authority of the Court, to the appellant, in case the decree appealed from shall be reversed, and such ship or goods ultimately condemned.

*After inhibition served, see*  
APPEALS, cap. V. sect. 2.

XII. OF THE PRACTICE IN SUITS FOR FORFEITURES.\*

231. By 5 Geo. 4. c. 113. s. 41. parties taking false oaths or suborning false wit-

\* 11. The practice to be observed in suits and proceedings in the Courts of Vice-Admiralty abroad is governed by certain rules and regulations established by an Order in Council under 2 & 3 W. 4. c. 51., and printed and circulated by the Board of Admiralty; s. 25. of these regulations, as to prosecutions for a breach of the laws for the abolition of the slave trade, is as follows:—

Foreign slave vessels cannot be detained at sea, except for a violation of treaty, and then only by such of his Majesty's ships-of-war as are provided with special instructions for that purpose, nor can the search of any such foreign slave vessel be made by any officer holding a rank inferior to that of lieutenant in the navy of Great Britain.

With respect to these seizures of foreign slave vessels, the Vice-Admiralty Courts have no jurisdic-

tion; the only tribunals which can legally adjudicate thereon are the "Mixed Commission Courts," established in pursuance of treaties with certain foreign powers.

When a vessel engaged in the slave trade is seized for a violation of the municipal laws of the United Kingdom of Great Britain and Ireland, it is the duty of the captor to send her with the slaves, if any on board, for the purpose of adjudication, to the nearest and most convenient port in any colony or settlement where there is a Vice-Admiralty Court.

Upon the arrival in port of the vessel and slaves seized, and also in case of a seizure of slaves on shore, an immediate representation of the seizure is to be made to the registrar of the Court of Vice-Admiralty, and the seizer is to make an affidavit

nesses under this act, shall be liable to the pains and penalties of perjury and subornation of perjury.

232. The 2 & 3 *Vict. c. 73.*\* is to be taken to have engrafted into its provisions as well

the act of 2 & 3 *W. 4. c. 51.*, as the rules and regulations which were made under the authority of that act, "for regulating the practice in the Vice-Admiralty Courts abroad;" and therefore a Portuguese

(in the form prescribed) detailing all the circumstances connected therewith, and stating especially by what breach of the laws the forfeiture of the slaves has been incurred. And in the case of the seizure of the vessel, there are to be annexed to the affidavit and verified therein, all original papers that may have been delivered up to the seizer, or if the ship's papers shall have been concealed, thrown overboard, or otherwise destroyed, that fact is to be stated in the affidavit.

The affidavit being duly sworn and exhibited before the Judge or Surrogate, he is to decree a monition to issue, returnable fourteen days after service, citing by name the owners or persons implicated, if known, and all others in general, to appear and show cause why the forfeiture should not be decreed and the penalties pronounced for.

Where the owners or persons implicated are not known, the monition must only cite all persons in general. If the monition contain the names of the owners or others from whom penalties are sought to be recovered, it should be personally served on the parties, in the manner of other instruments requiring personal service. In all cases the monition must be served on the Exchange, or the Court house, or other public place, as before directed in derelict cases. If the monition issue against all persons in general, and not against any individual in particular, it need not be served in the manner last mentioned.

If, when the monition has been served, no appearance be given, the Judge, upon the return of the monition, is immediately, or on the next regularly adjourned Court day, to proceed to pronounce, by interlocutory decree, for the forfeiture of the slaves (if any) and vessel, and for the penalties due by law, without requiring any further evidence.

If it shall appear to the Judge, by affidavit, that personal service cannot be effected on the parties, if any, named in the monition, by reason that they have purposely absented themselves to avoid service, the Judge is to pronounce his decree; but if he has reason to believe that the parties are *bond fide* ignorant thereof, he ought to reserve his judgment, so far as relates to the penalties sued for, and also as to the slaves and vessels, if any doubt shall arise upon the evidence. In the case of a monition citing all persons in general, and not describing any person by name, no penalties against individuals can be pronounced for; but if the persons by whom the offence has been committed shall afterwards be discovered, a subsequent monition may issue in the same suit against him or them for recovery of the penalties.

In order to move for the interlocutory decree, a case, together with a copy of the affidavit, must be placed in the hands of counsel, as in other cases.

At any time before the interlocutory decree, a claim may be given on behalf of the owners, and the claimant may, if he think fit, require the seizer to proceed by plea and proof, and pray him to be assigned to give his information or libel, to which the claimant may give in a responsive plea or allegation.

To the claim must be annexed an affidavit, con-

taining the names, additions, and residence of the owners, and a detail of all the circumstances on which the claimant means to rely as the ground of his defence. The same course, in all respects, is to be pursued in giving in the claim, as before directed in derelict cases.

When a claim is given and no libel prayed, the Court may proceed to adjudge the case on the facts and circumstances stated in the affidavit of the seizer, exhibited on praying the monition, and in the claim and the affidavit in support thereof.

Should the Judge consider the case not sufficiently proved by such evidence to enable him to proceed to sentence, he may direct a libel to be filed by the seizer, and witnesses to be examined thereon, to which libel the claimant's proctor may give a responsive plea or allegation, and in like manner examine witnesses. The proceedings will then be the same as directed in cases contested by plea and proof.

In the event of the Judge not in the first instance condemning or restoring the slaves, he is required in certain cases, by the act 5 *Geo. 4. c. 113.*, to order them to be valued; and upon the valuation being approved by the Court, they are to be delivered over, pursuant to the act, to persons specially appointed to receive, protect, and provide for them. The same course is to be followed when a decree restoring or condemning slaves is suspended by appeal. And in no case whatever are slaves to be delivered to claimants on bail, to answer adjudication.

Where a seizure of several slaves, belonging to the same owner, is made by the same seizer for one and the same cause of forfeiture, there is to be only one affidavit and one monition required to enable the Court to proceed. Where several slaves, whether belonging to the same or different owners, are seized for the same cause of forfeiture, but by different seizers, there must be a separate affidavit by each seizer, but the slaves may all be included in one monition. Where several slaves belonging to the same or to different owners are seized by the same seizer or by different seizers, for different causes of forfeiture, there must be as many affidavits and monitions as there are different causes of forfeiture; but the Judge may afterwards, in his discretion, consolidate the proceedings, so as to form but one suit to come before the Court for hearing.

Care is to be taken in consolidated proceedings that the monition, and also the libel when that proceeding is required, be drawn conformably with the several circumstances, and that the different seizures be described in separate articles or counts of the libel or information. In order to avoid the injury which owners may sustain by the delay of the seizer to proceed, any claimant or owner may apply to the Court for a monition against the seizer, returnable in three days after service, requiring him immediately to proceed to the adjudication of any slave or slaves so claimed.

\* 12. The 2 & 3 *Vict. c. 73.* is repealed, as to Portuguese ships, by the 5 & 6 *Vict. c. 114.*

subject cannot claim to have the proceedings against his vessel, suspected of trading in slaves, conducted according to the forms of the Civil Law, but his vessel may be condemned under the more hasty proceedings prescribed by those "rules and regulations." *Held* also, that a monition may issue upon the affidavit of a person present at the seizure, though such person was not the party who actually seized the vessel, and that the monition need not be served upon the owner, but that service of it specially upon the master of the ship by personal service, and generally upon all persons interested, by posting it up in some public place, will be sufficient service. *Guimaraens v. Preston*. (*The ship Thirteenth of June*), 6 Jur. 879., 4 Moore, 167.

233. Evidence of the owner's claim not tendered in the Court below, received by the Judicial Committee on the hearing of the appeal. *Ibid*.

234. The proper course of proceeding in

causes for condemnation of vessels engaged in the slave trade is for the proctor of the captor, after lodging in the registry all the papers found on board the prize, and citing by monition the party to appear to give a libel (answering to the bill of indictment in criminal cases), stating the facts imputed, and the law that is charged to be violated, and praying the examination of his witnesses thereon, and the judgment of the Court on the effect of the documents and testimony to be produced; the claimant or party charged has then a right to give his claim, stating the facts by which he undertakes to discharge himself from legal censure, and to produce his witnesses thereon. On the result of the evidence so furnished, and of proper special interrogatories administered under the immediate authority of the Judge, the Court should pronounce its judgment. *Le Louis, Forest*, 2 Dodson, 240.

## STOPPAGE IN TRANSITU.\*

1. Where goods are shipped without orders, the consignor has an unlimited right to vary the consignment at pleasure, but when orders have been received and executed, and delivery made to the master of the ship, the goods are considered *in transitu*, and the consignor can only vary the consignment upon the insolvency of the

consignee, or his refusal to pay for them. It is not necessary that the consignee should be actually insolvent at the time; it is sufficient if the insolvency happen before the arrival of the goods. Variation of consignment of goods *in transitu* by the consignor under an erroneous impression of the insolvency of the consignee, *Held* to be in-

\* 1. For information under this head the reader is referred to *Abb. Sh.*, part 4. cap. 11., and *Cross on the Law of Liens and Stoppage in Transitu*, p. 361., where the subject is fully discussed; and see also 2 *Stephens' Black. Comm.* 123., *Smith's Merc. Law*, book iv. cap. 1. p. 500., and *Shaw's Digest of the Scotch Reports*, vol. 1. p. 870. and vol. 2. p. 1261. The cases occurring in the Courts of Common Law and Equity on this subject are to be found in *Petersdorff's Abr.*, *Harrison's Digest*, and *Chitty's Equity Index*, under this head. The High Court of Admiralty has no jurisdiction on the subject, except in prize proceedings, where questions thereon arise collaterally only, and very rarely.

2. When goods have been shipped on credit and the consignee has become a bankrupt or failed, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, allows him in many cases to countermand the delivery,

and before or at their arrival at the place of destination, to cause them to be delivered to himself or to some other person for his use. This is usually called stoppage *in transitu*, and is founded on principles of natural justice and equity. *Abb. Sh.* 511.

3. It is not necessary that the vendor, to exercise his right of stoppage, should actually take possession of the property consigned, by corporal touch; he may put in his claim or demand of his right to the goods *in transitu*, either verbally or in writing; and it will be equivalent in law to an actual stoppage of the goods, provided it be made before the transit has expired. 2 *B. & P.* 457, 462., 2 *Esp. Rep.* 613., *Co. B. L.* 4941., *Atk.* 245., *Ambl.* 399., 1 *Esp. Rep.* 240., 3 *East*, 394. But the consignor must put in his claim and endeavour to get the property in some shape or other; the mere bankruptcy or insolvency of the consignee is no countermand of the delivery to him. 3 *T. R.* 464., 3 *Esp.* 59.

valid, and the goods to be the property of the consignee, to whom as a neutral restitution was decreed accordingly. *The Constantia*, *Henrickson*, 6 C. Rob. 321.; and *The Twende Vernier*, *Munch*, 329. n.

2. A transfer *in transitu* of the goods of an enemy cannot be permitted in time of war: condemnation accordingly. *The Twende Vernier*, *Munch*, *Ibid.* 329. n.

3. The importer of goods is the consignee who directs the port to which, and the person to whom, they are to be delivered, and who can stop the goods *in transitu*. *The Matchless*, *Vint*, 1 Hagg. 102.

4. Stoppage *in transitu* is a right possessed by the vendor to prevent the vendee from taking the possession of goods consigned to him, on the latter's insolvency. *Assignees of Bagwell v. Howard* (1759), 1 H. Bl. 366. n.

5. Goods are said to be *in transitu* whilst in any sort of passage to the hands of the buyer; or, in other words, until actual de-

livery. *Stokes v. La Riviere* (1784), cited in 3 T. R. 466. and 3 East, 397.

6. As it is essential in order to entitle the party to stop *in transitu*, that he should stand in the relation of vendor to the insolvents, a mere surety for the price of the goods is not entitled to stop them. *Siffken v. Wray* (1805), 6 East, 371.

7. An alien enemy who had shipped a cargo to a British merchant under a British licence was allowed to stop the goods by his agent on their arrival in England, the licence being *Held* to give legality to all the consequences of the sale. *Fenton and Another v. Pearson and Another*, 15 East, 419., Abb. Sh. 517.

8. Injunction to restrain the sailing of a vessel containing goods sold to a person who had become insolvent, but over which the plaintiff retained a right of stoppage *in transitu*, refused. *Semble* that a Court of Equity has not jurisdiction in any case to stop goods *in transitu*. *Goodhart v. Lowe*, 2 Jac. & W. 349.

## STATUTES.

### I. OF THE CONSTRUCTION OF —

1. *Generally.*
2. *Remedial statutes.*
3. *Statutes in pari materia.*

### II. MISCELLANEA.

#### I. OF THE CONSTRUCTION OF — \*

##### 1. *Generally.*

1. To attain the true construction of a statute, the Common Law shall always be looked to, and that construction be adopted which is most conformable to it. It is upon this head observed by Lord Coke, that to construe a statute truly four things are necessary to be considered and understood: 1. What the Common Law was before; 2. What was the mischief for which the Common Law had not provided; 3. The remedy provided by the statute;

and, 4. The true reason of the remedy. *Miles v. Williams*, 1 P. Wms. 252., 10 Mod. 245., 3 Co. Rep. 83., Hob. 97., 11 Mod. 150.

2. In cases of public concern, and where there are no negative words in the statute, the Court will allow, *ex necessitate*, a latitude of construction. *Rea v. Sparrow* (1726), 2 Stra. 1123.

3. But the construction must be according to the intention. *Williams v. Pritchard* (1791), 4 T. R. 2.

4. In a question of dubious interpretation of a statute, public policy and con-

\* 1. For further cases as to the construction and operation of statutes, see *Harrison's Digest*, tit. *Statute*, vol. iii. p. 6262. et seq.

venience, though they will not constitute or overthrow the law, are good interpreters thereof, because it is not to be presumed that a statute is blind or indifferent to public consequences. *The Swift, Begbie*, 1 Dodson, 344.

5. In the construction of statutes, where there are general words first and an express exception afterwards, the ordinary principle of law, *expressio unius exclusio alterius*, applies. *Spry v. Flood*, 2 Curteis, 365.

6. To arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute, but in connection therewith, understanding by this as well the "title" and "preamble" as the "purview," or enacting part of the statute. *Brett v. Brett*, 3 Add. 210.

7. If any part of a statute be obscure, and other passages in the same act will elucidate that obscurity, recourse may be had to such context for that purpose. *Rex v. Palmer*, 1 Leach, C. C. 352. 355., 2 East, P. C. 898.

8. In construing an act of parliament, the Court must take into consideration not only the language of the preamble, or any particular clause, but of the whole act; and if in some of the enacting clauses expressions are to be found of more extensive import than in others, or than in the preamble, the Court will give effect to those more extensive expressions, if upon a view of the whole act it appears to have been the intention of the legislature that they should have effect. *Doe d. Bywater v. Brandling*, 7 B. & C. 643., 1 M. & R. 600.

9. The preamble of a statute cannot control the enacting part, which is clear. *Crespigny v. Wittenoom*, 4 T. R. 793.; S. P. *Lees v. Summersgill*, 17 Ves. jun. 508.; *Parslow v. Dearlere*, 4 East, 438.

10. Although if doubts arise on the words of the enacting part, it may be resorted to. *Ibid. Mason v. Armitage*, 13 Ves. jun. 36.

11. Strong words in the enacting part of a statute may extend it beyond the preamble. *Pattison v. Bankes*, Cowp. 543.

12. Where an act of parliament enacts any matter or thing, it tacitly gives the right of carrying it into effect by all legal means; and therefore, though the words

used are not express as to all matters necessary for the purpose, the Court will so construe the statute that its object will be attained. *Regina v. Simpson*, 10 Mod. 248., *Rex v. Stevenson*, 2 East, 362.

13. Where a statute gives a new jurisdiction, the construction is not to be "an equitable construction." *Warwick v. White* (1798, Ex.) Bunb. 106.\*

14. In the case of all penalties, the Court of King's Bench has considered costs in the nature of a penalty, and has Held that all statutes giving costs are to be construed strictly. *Cone v. Bowles* (1792), 1 Salk. 205.

## 2. Remedial statutes.

15. A remedial statute should be construed with sufficient liberality to meet the mischiefs which it was intended to remedy. *The Alexander, Larsen*, 1 W. Rob. 296.

16. Where an act of parliament proposes to give a remedy for a grievance suffered by any person, and to prevent or punish it under a penalty, in which case it is both remedial and penal, the construction shall be to give full effect to the remedy, by extending the penalty to cases within the spirit of the act, though not within the letter, if not contrary thereto. *Hammond v. Webb*, 10 Mod. 282.

## 3. Statutes in pari materid.

17. The true construction of an act of parliament is to be collected from applying the same meaning to words and phrases which have been used in former statutes; and they are to be taken in the same sense as they have been construed in the Courts above. *Rex v. Barlow*, Salk. 609., Co. Litt. 391., 2 Inst. 434., 3 Inst. 91., 2 Stra. 828., 1 T. R. 49.

18. It is an established rule of law, that all acts of parliament made *in pari materid* are to be taken together as if they were but one law; therefore, if there be many statutes all relating to the same subject or matter, they should all be taken together in construing any one of them. *Ex parte Carruthers*, 9 East, 44.

19. If there be several acts upon the same subject, they are to be taken together as forming one system, and as interpreting

\* 2. Such a construction as is calculated to give effect to the object for which a statute was passed, though not precisely within the enacting words,

has been expressed by Lord Coke as an equitable construction. 14 *Petersdorff*, 719. n.

and enforcing each other. *Rez v. Palmer*, 1 Leach, C. C. 352. 355., 2 East, P. C. 898. 1 T. R. 125.

20. Statutes on the same subject must be construed together. *Anon.* Loft. 398.

## II. MISCELLANEA.

21. British subjects are bound to know the statute law and to construe it rightly. They cannot aver ignorance or misapprehension thereof. *The Charlotta, Duplex*, 1 Dodson, 392.

22. Non-user does not repeal a statute. *White v. Root* (1786), 2 T. R. 274.; S. P. *Leigh v. Kent* (1789), 3 T. R. 364.

23. Acts of parliament relating to trade

in general are public acts. *Kirk v. Nowell*, 1 T. R. 125.

24. The Courts of Common Law are entrusted with the exposition of acts of parliament. *Gould v. Gapper*, 5 East, 370., 1 Smith, 328.

25. The Crown cannot control a statute, even by its licence. *Toulman v. Anderson*, 1 Taunt. 227.

26. No British act of parliament or commission founded on it, if inconsistent with the Law of Nations, can affect the rights or interests of foreigners. *Le Louis, Forest*, 2 Dodson, 238.; and see *The Nostra Signora de los Dolores, Morales*, 1 Dodson, 296.

## TENDERS.

### I. OF THE EFFECT OF —

#### 1. Generally.

#### 2. As to costs.

### II. MISCELLANEA.

### I. OF THE EFFECT OF —

#### 1. Generally.

1. A tender to prevent litigation is no admission of the justice of the demand, but merely an offer to escape the inconvenience of litigation. *The Frederick, Hearn*, 1 Hagg. 218.

2. A tender of remuneration is an admission of services performed and to be rewarded. *The Porcupine, Laing*, Ibid. 378.

3. The making of a tender is necessarily an admission of some services. *The Portia*, 9 Jur. 167.

4. A tender not accepted in due time, Held not to bind either the Court or the parties tendering. *The General Palmer, Truscott*, 2 Hagg. 180.

#### 2. As to costs.\*

5. A tender to carry costs must be made in acts of Court. In a salvage case a tender

\* 1. Where a tender is sufficient, the Court will give costs, but it will not hold itself bound to do so where the question is fine-drawn. In such a case the Court, though pronouncing for the sufficiency of a tender, declined to give costs. *The Dydden* (27 Feb. 1839), 4 Monthly Law Mag. (Notes of Cases), 153.

2. In ordinary cases, the rule of the Court of Admiralty is, that if a tender be made and rejected, and afterwards pronounced sufficient, a condemnation in costs should follow, as costs are given not with a view of punishment, but as a matter of justice to the other party; but the Court has great difficulty in applying this rule with all its rigidity to salvage cases, as in the very nature of salvage services there is something so loose and indefinite,

and so difficult to be determined by the best constituted minds when looking at their own case, that the Court is not inclined to press the doctrine to its full extent; but where there has been an offer on the face of the proceedings so large that it ought to have been accepted, the general rule applies. In a case, however, in which a tender of the owners was pronounced adequate, and the salvors had incurred no risk nor exerted any extra labour or skill, and the time occupied in the service was very brief, the Court nevertheless refused to condemn the salvors in costs. *The William*, 5 Notes of Cases, 108.

3. Where the judgment of Commissioners of Cinque Ports, or of magistrates allotting salvage, is reversed in part on appeal, the Court will not



verbally made, but pronounced sufficient in amount, *Held* insufficient to bar the salvor's claim for costs. *The Vrouw Margaretha, Jacobs*, 4 C. Rob. 107., 2 Chitty's Gen. Prac. 525.

6. Where a tender is made in acts of Court, and is ultimately *held* sufficient, the Court will condemn the adverse party in costs, if it appear that the proceedings have been vexatious. *Ibid*.

7. A party who does not accept a tender without costs, made before action, is not entitled to his expenses if litigation ensue and the tender be pronounced sufficient, when he might have had the same sum without any litigation at all. *The Frederick, Hearn*, 1 Hagg. 218.

8. The expenses of salvors are usually allowed, though a tender by the owners objected to by them be upheld or the services be deemed to be pilotage merely. *The City of Edinburgh, Fraser*, 2 Hagg. 336.

9. In a salvage suit, tender of the owners upheld, but salvors' costs allowed. *The Marquis of Huntly, Mollisson*, 3 Hagg. 249.

10. Cases of salvage in which tenders of the owners were upheld, but no costs given. *The Eleanora Charlotta, Osterman*, 1 Hagg. 156.; *The General Palmer, Truscott*, 2 Hagg. 176.

11. In a salvage suit a tender made by the owners to the salvors, accompanied with the expenses, and refused by them, pronounced to be sufficient, and costs of salvors refused, although partially incurred prior to the tender. *The John and Thomas, Baxter*, *Ibid*. 157. n.

12. Cases of salvage in which tenders were upheld and salvors condemned in costs. *The Clifton, Lightbody*, 3 Hagg. 117.; *The Black Boy, Devey*, *Ibid*. 386. n.; *The Towan*, 8 Jur. 221., 2 W. Rob. 259.

13. Where a tender is pronounced for and *held* to be amply sufficient, the Court will always give costs. When the sufficiency is nicely balanced, the general principle will be in favour of costs, but the Court will not hold itself bound to give them. *The Emu, Nelson*, 1 W. Rob. 16.

## II. MISCELLANEA.\*

14. By 56 Geo. 3. c. 68. gold coin is declared to be the only legal tender, and no tender of silver coin is to be legal beyond forty shillings.

15. In a suit for wages, the amount of wages, &c. was paid into the registry, with an undertaking to pay such costs as might be decreed, the liability for costs being the question at issue between the parties. *The Margaret, Nunn*, 3 Hagg. 239.

16. In a salvage suit, application of the owners, for payment out to them, on account of their costs, of a sum of 50*l*., the amount of a tender made by them and paid into the registry, and which tender had been pronounced for, and salvors (who were resident out of the jurisdiction of the Court) condemned in the same amount *nomine expensarum* of the owners, granted. *The Clifton, Lightbody*, *Ibid*. 124.

17. In a salvage cause where salvage services have been rendered and certain damages incurred (by the salving vessel rendering assistance), a tender to stop the action, and to entitle the party making it to all the benefits of a tender in Court, must include all the damages which may have been sustained. In a case of salvage in which a tender of 20*l*., had been made and rejected, it being admitted that the tender did not include any remuneration for damage admitted to have been sustained by the salving vessel, tender overruled, and 45*l*., inclusive of damages, allotted with costs. *The Ocean, Witham*, 1 W. Rob. 334.

18. In the case of a tender in pursuance of an agreement for services, it is upon the parties who say the offer was made and the agreement accepted that the affirmative lies, and they must prove it. *The William, Hannington*, 9 Jur. 631.

19. A tender "under protest" is not the less available, those words merely implying non-acquiescence in the demand, not precluding the recovery back. *Manning v. Lunn*, 2 Carr. & K. 13.

20. A tender, even in cases of salvage, much more in cases of damage, would not be binding or conclusive unless made in Court. *The Hope, Hart*, 2 W. Rob. 9.

generally give costs. And *semble*, notwithstanding the Court at the same time pronounces against a tender made by the appellants in lieu of the award. *The Lord Goderich* (1841), 10 Monthly Law Mag. (Notes of Cases), 217.

\* 4. Payment or tender of payment to an agent in the course of his employment is payment or tender of payment to the principal. *Smith's Merc. Law*, 124., and see the cases there cited.

## TITLE.

- I. OF TITLES TO SHIPS GENERALLY, 450.
- II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN QUESTIONS OF—, 451.
- III. UNDER SALES BY THE AUTHORITY OF THE HIGH COURT OF ADMIRALTY, 451.
- IV. UNDER SALES BY THE AUTHORITY OF FOREIGN COURTS OF ADMIRALTY, 451.
- V. UNDER SALES BY THE AUTHORITY OF COURTS OF VICE-ADMIRALTY ABROAD, 452.
- VI. UNDER SALES BY THE MASTER ABROAD, 452.
- VII. BY BILL OF SALE, 454.
- VIII. IN CASES OF PRIZE, 454.
  1. *Generally*, 454.
  2. *Under purchases by neutrals from the enemy*, 454.
    - (a) *Generally*, 454.

- (b) *In blockaded ports*, 455.
  3. *Under purchases by British subjects from the enemy*, 455.
  4. *Under sentences of condemnation of prizes lying in neutral ports*—see PRIZE.
  5. *Rights of former owners where divested—et contra*—see POSSESSION, PRIZE, RECAPTURE, RESTITUTION, SALVAGE (*Military*).
- IX. WHERE DEFECTIVE—HOW CURED, 455.
    1. *By lapse of time*, 455.
    2. *By treaties of peace*, 455.
    3. *By other circumstances*, 455.
  - X. OF THE PROOF OF—, 456.
  - XI. OF MORTGAGEES—see MORTGAGERS.
  - XII. IN CASES OF WRECK—see WRECK. See CHARTERPARTY, SHIPS.

## I. OF TITLES TO SHIPS GENERALLY.\*

1. The sale of a share of a ship is good without actual delivery. *Addis v. Baker*, 1 Anst. 222.
2. Possession of a ship under a transfer void for non-compliance with the Register Acts is a sufficient title in trover against a stranger for parts of the ship being wrecked. *Sutton v. Buck*, 2 Taunt. 302.
3. Assignment of an outward-bound ship, without possession and delivery of bills of lading, policies, &c., held good as against creditors. *Browne v. Heathcote*, 1 Atk. 160.
4. An assignment of a ship at sea is valid, though no possession be given; *secus*, of goods on land; and an assignment of a mere passage vessel on the Thames, and no possession given, is invalid. *Bourne v. Dodson*, *Ibid.* 154.
5. The holder of a bottomry bond made in time of peace on a vessel of a country becoming an enemy, cannot, on the capture

of such vessel, claim payment out of the proceeds in the Prize Court. The bottomry holder acquires the *jus ad rem*, but not the *jus in re*, until it has been converted and appropriated in a Court of Justice. The property of the vessel continues in the former proprietor, who has merely given a right of action against it. *The Tobago, De Witte*, 5 C. Rob. 218.; *Johnson v. Shippen*, 2 Ld. Raym. 984.

6. Supposing that the master of a ship in a foreign port, reported upon survey there not to be seaworthy or repairable, so as to carry the cargo to its place of destination, except at an expense exceeding the value of the ship when repaired, has sufficient authority, under the decree of the Vice-Admiralty Court there, to sell the ship: still the vessel subsisting as such, and capable of being used for the purposes of navigation, and so used in fact after some repair on the spot, can only be conveyed by the master in the form prescribed by the Register Acts. A transfer under

\* 1. Of the title to ships under assignments from parties afterwards becoming bankrupts, and in fraud of creditors, and as to the effect of the bankruptcy of the vendor on the title of the vendee, see *Harrison's Digest*, tit. *Bankrupt*, cap. xi. s. 9. vol. i. p. 924.

2. Title to a ship may be transmitted by the operation of the bankrupt or insolvent laws, or it may be taken and sold in execution, being a chattel personal, in which case it must be registered *de novo*. *Smith's Merc. Law*, 165.

3. In cases of successive sales or transfers of the same property by the same person, each of the rival vendees has (under 3 & 4 W. 4. c. 55., but

now repealed by 8 & 9 Vict. c. 89. containing similar provisions) thirty days from the entry of his own instrument or next subsequent return of the ship to port, during which no one but himself can obtain a perfect title. But after that time has elapsed, if further time be not granted to him, his claim may be defeated by an indorsement of the particulars of some other vendee's interest on the certificate. *Abb. Sh.* 79.

4. As to the validity of the purchase of a ship from pirates *bond fide*, and in ignorance of her piratical character, and of the purchase of ship or goods generally from such parties, see *Introduction to Godolphin's Adm. Jur.*

such circumstances *held* invalid, the requisites of those acts not having been complied with. *Reid v. Darby*, 10 East, 143.

See NAVIGATION LAWS,  
*cap. III. sects. 2, 3, 4.*

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY IN QUESTIONS OF —\*

7. In former times the Admiralty Court decided without reserve on all questions of title, but since the Restoration the higher Courts of the country have *held* that this Court had not jurisdiction thereon. *The Warrior, Peache*, 2 Dodson, 289.

8. The High Court of Admiralty has power to inquire into the title in cases in which British subjects lay claim to a ship coming to this country in the possession and as the property of foreigners. *The Experimento, Garcia*, *Ibid.* 38.

9. By 3 & 4 *Vict. c. 65. s. 4.* the High Court of Admiralty shall have jurisdiction to decide all questions of title to or ownership of any vessel or proceeds in the Registry arising in any cause of possession, salvage, damage, wages, or bottomry.

See POSSESSION, *cap. II.*

## III. UNDER SALES BY THE AUTHORITY OF THE HIGH COURT OF ADMIRALTY.

10. In all cases of bottomry, salvage, and wages, the Court of Admiralty possesses an undoubted power to decree a sale of the vessel proceeded against, unless the demand of the successful suitor be satisfied. The jurisdiction of the Court therein is confirmed by the Municipal Law of this country, and by the general principles of the Maritime Law, and the title conferred by the Court in the exercise of this authority is a valid title against the whole world, and is so recognised by the Courts of this and of all other countries. *The Tremont, Gray*, 1 W. Rob. 164.

11. A vessel found at sea and brought into port as derelict, having been sold under an order of the Instance Court of Admiralty at the instance of the salvors and claimant (without fraud), *Held* that such sale was available against the owner's right of seizure for a previous forfeiture in-

curred by the ship having been guilty of a forfeitable offence against the revenue laws, although the Crown was not a party to the proceedings in the Admiralty Court other than by the King's Procurator General claiming the vessel as an Admiralty droit, and although no decision of droit or no droit was awarded, and the sale took place *pendente lite* under an interlocutory order. *Attorney-General v. Norstedt*, 3 Price, 97.

## IV. UNDER SALES BY THE AUTHORITY OF FOREIGN COURTS OF ADMIRALTY.

12. An English ship having been taken by a French man-of-war under colour of a Dutchman, carried into France, and there condemned by a French Court of Admiralty as a Dutch prize, was afterwards purchased of the captor by an English merchant, who brought her into England, where the former owner brought an action of trover for the ship against the purchaser; and all this matter having been found specially, judgment was given for the defendant, because, the ship having been legally condemned as a Dutch prize, the Court of King's Bench here will give credit to the sentence of the Court of Admiralty in France, and take it to be according to right, and will not examine their proceedings, for it would be very inconvenient if one kingdom should by peculiar laws correct the judgments and proceedings of the Courts of another kingdom, and sentences in Courts of Admiralty ought to bind generally according to the *jus gentium*. *Carth.* 32. cited in *Hughes v. Cornelius* (34 Car. 2.), Skin. 59., 6 Vin. Abr. 534.

13. The sale of a vessel by a foreign Court of Admiralty for the payment of expenses *held* valid, and the title of a party claiming thereunder pronounced for against the former owner, but without costs. *The Experimento, Garcia*, 2 Dodson, 47.

14. A British slave ship having been seized by the slaves was recaptured by an English frigate, and carried to St. Domingo, where it was condemned and publicly sold, under a decree of an illegally constituted Court of Admiralty there: *Held* that such condemnation and the sale made under it were null and void. *The Thomas, M'Quay*, 1 C. Rob. 322.

\* 5. A public armed vessel of a foreign friendly sovereign entering a port open for her reception on the terms on which ships-of-war are generally permitted to enter the ports of a friendly power, is not subject to the jurisdiction of the nation in whose

port she lies; and title to such a vessel cannot be asserted by libelling her in the Courts of Admiralty. *The schooner Exchange v. M'Faddon*, 2 Cranch's (AMERICAN) Rep. 115.; and see *The Prins Frederick, Van Senden, Commander*, 2 Dodson, 451.

# V. UNDER SALES BY THE AUTHORITY OF COURTS OF VICE-ADMIRALTY ABROAD.

15. In the West Indies it is not unfrequent for an application to be made to the Vice-Admiralty Courts in that part of the world for leave to empower the master to sell. It has been likewise matter of complaint that this power is sometimes abused by an improvident and collusive sale of cargoes when no real necessity exists; that is, in other words, that the power is usurped in cases where the party does not legally possess it. But the very ground of the defect of power in such cases implies and affirms its existence in cases where the necessity is real. *The Gratitude, Maz-zola*, 3 C. Rob. 240.

16. There is a very convenient practice, which obtains in the Courts of Vice-Admiralty in the West Indies, where the fact of distress being proved, the transaction is not left to the master, but a sale is ordered under the superintendence of the Court itself. The legal validity of such transfers has been contested in the Courts of Great Britain, and they have been held not to be good, though the Courts in which such decisions took place might perhaps incline to consider it as a defect in the law of England, that a practice so conducive to the public utility could not legally be maintained. In a case of that description strongly put, although this Court does not know that such a power is given to the master by the General Maritime Law, yet feeling its expediency, the Court of Admiralty would strain hard to support the title of the purchaser. *The Fanny and Elmira, Hicks*, Edwards, 118.

17. The authority of a Court of Admiralty for the sale of a ship is in some parts of the world deemed conclusive as to the legality of the sale, but it is otherwise held by the Courts possessing the controlling power in this country. *The Warrior, Peache*, 2 Dodson, 293.

18. The sale of a vessel under the authority of a Vice-Admiralty Court abroad at the petition of the master, and after

survey and report of her unfit state to prosecute her voyage, and that the expenses of repair would exceed her value, held not sustainable. *Reid v. Darby*, 10 East, 143.; *S. P. Hunter v. Prinsep and others*, 10 Ibid. 378.; and see *Hunter v. Parker*, 7 M. & W. 322., Abb. Sh. 9. 23.

19. In the case of the sale of a vessel after survey, report, and condemnation, by official persons abroad, held that such a proceeding was in the nature of an inquisition of a sheriff for the purpose of information to those having the power of selling the ship, and not conclusive on the party whose property was in question. *Andrews v. Glover* (Ellenborough), Abb. Sh. 23.

# VI. UNDER SALES BY THE MASTER ABROAD.\*

20. The master has no authority to sell any part of the ship, and his sale transfers no property, but he may hypothecate. *Johnson v. Shippen*, 2 Ld. Raym. 984., Abb. Sh. 7.; *S. P. Ekins v. East India Company*, 1 P. Wms. 392., 2 Bro. Parl. Cases, 72.

21. The sale of a ship by the master, though made in a foreign country in a case of inevitable danger, the ship and tackle being beaten and broken, and there being no hope of saving any part of them, partly on account of the tempest, and partly on account of the barbarity of the inhabitants of the country, who carried off everything cast on shore, held not to convey the property to the purchaser. *Tremenhere v. Tressilian*, 1 Sid. 452.

22. A master has not, unless in a case of extreme necessity, authority to sell the ship, and he is bound to try every other expedient to raise money before disposing of the ship or any part of the cargo. *Underwood v. Robertson*, 4 Camp. 138.

23. The master has, by virtue of his employment, not merely those powers which are necessary for the navigation of the ship and the conduct of the adventure to a safe termination, but also a power, where such termination becomes hopeless, and no

\* 6. See *Abb. Sh.*, part 1. cap. i. sect. 2., where the cases on this head are collected and discussed.

7. The master cannot sell the ship without the assent of the owners, though it be in imminent danger. 1 Sid. 453.

8. The master cannot sell the ship abroad or in cases of disaster there, without the authority of his owners. *Laws of Oleron*, cited in *Godolphin's Adm. Jur.* ext. 1. 3.

9. The master has a right to sell the ship in

cases of urgent necessity, acting *bond fide* for the interest of all concerned. *The Tilton*, 5 Mason's (AMERICAN) Rep. 465.

10. It is not sufficient to a valid sale by the master that he acted with good faith and in the exercise of his best discretion. There must be a moral necessity for the sale, so as to make it an urgent duty upon the master to sell for the preservation of the interest of all concerned. *The Sarah Ann*, 2 Sumner's (AMERICAN) Rep. 206.

*Validity of the sale is to be tried, not by the law of the  
country of sale but by the general maritime law of the world - Can  
such - vol. 432 - the vessel belonging to another country  
reason in 744-51 1802*

Compare  
for these three  
forms in  
case below  
note

& C. 691.; *Allen v. Sugrue*, 8 B. & C. 565.; *Doyle v. Dallas*, 1 M. & Rob. 48.; *Gardner v. Salvador*, 1 M. & R. 116., Abb. Sh. 14.

33. The captain of an insured ship which has been injured by perils of the seas is not justified in selling the ship instead of repairing her, unless he either have not the means of getting the repairs done at the place where the vessel is obliged to be put in, or cannot get them done except at such an expense as would render it undoubtedly improper to repair if the ship were not insured, or has not money in his possession sufficient to pay for the repairs, and is not in a situation to raise it by loan or otherwise, except at such an extravagant rate as would prevent a prudent man, in the exercise of a sound and vigorous judgment, from undertaking the repairs under such circumstances. *Soames v. Sugrue*, 4 Car. & P. 276. 284. (Tindal.)

34. In a case of extreme necessity, and where the ship, having got aground, cannot, in the opinion of persons competent to judge, be raised, the captain may sell her for the benefit of the owners, but it can only be in cases of extreme necessity, and the survey, &c., must be made on the best information, and with the purest good faith. *Hayman v. Molton*, 5 Esp. 54. (Ellenborough.)

See POSSESSION, *cap. IV. sect. 3.*

## VII. BY BILL OF SALE.

35. A bill of sale is the proper title to which the maritime courts of all countries look. It is the universal instrument of transfer of ships in the usage of all maritime countries, and in no degree a peculiar title deed or conveyance known only to the law of England. It is what the maritime law expects, what the Court of Admiralty would in its ordinary practice always require, and what the legislature has made absolutely necessary by statute. *The Sisters*, 5 C. Rob. 155.

36. The party holding the bill of sale has the legal title, and is entitled to the possession against the asserted equitable interest in others. Sentence accordingly in a cause of possession. *Ibid.*

37. The Court of Admiralty cannot take cognisance of a contract or agreement to sell shares of a ship, the 34 *Geo. 3. c. 68.* expressly enacting that no transfer shall avail at law or in equity unless made by

bill of sale. *The New Draper, Walker*, 4 C. Rob. 291.

See NAVIGATION LAWS;  
*cap. III. sect. 3. div. (a).*  
See *post*, Nos. 40, 41.

## VIII. IN CASES OF PRIZE.

### 1. Generally.

38. A sentence of condemnation is by the Law of Nations deemed generally necessary to give a neutral a good title to a prize ship. Such condemnation must be by the adjudication of a tribunal of competent jurisdiction, exercising its functions within the belligerent country making the capture. *The Flad Oyen, Martensen*, 1 C. Rob. 140.; *S. P. Havelock v. Rockwood*, 8 T. R. 268.

39. If a neutral state seize and sell a vessel, there being no sentence of condemnation, the property in the vessel is not changed. *Wilson v. Forster*, 6 Taunt. 25., 1 Marsh. 425., Abb. Sh. 27.

See PRIZE, *cap. II. sect. 5.*

### 2. Under purchases by neutrals from the enemy.

#### (a) Generally.

40. The purchase of vessels in the enemy's country is allowed by the law of England to persons conducting themselves in a fair neutral manner, and not accessory to the purposes of the enemy, but a bill of sale must be produced. *The Welvaart, Cornelis*, 1 C. Rob. 123, 124. If purchased by an agent, letters of procuration must be produced. *The Argo, Smit*, *Ibid.* 158.

41. On a claim by a neutral in the prize court for a vessel, as having been purchased by him in the enemy's country, the absence of a bill of sale will be a cause for further proof. *The Welvaart, Cornelis*, 1 C. Rob. 122., *The Juffrow Anna, Grefson*, *Ibid.* 124. A.; *The Hoffnung, Berens*, 2 C. Rob. 162.

42. There have been some old cases of enemy merchant vessels driven into neutral ports, out of which they could not escape, and there sold, in which, after much discussion and hesitation, the validity of the purchase by the neutral has been sustained, but such a privilege cannot be extended to an enemy's vessel built for war, driven in by the arms of the other belligerent, and sold under such circumstances, even though to a neutral prince. Such a transfer held to be invalid. *The Minerva, Knuttell*, 6 C. Rob. 396.

43. A neutral ship having been condemned as prize by the enemy and purchased at a public sale for the former owners was seized and proceeded against under the Order in Council of November, 1807, declaring the sale of ships by the enemy to neutrals to be illegal: *Held* that such Orders in Council were framed on the principle of retaliation merely, and that it being shown that the enemy did not follow up their ordinances to their full extent, but acknowledged the validity of similar sales by their enemy, such sale was not within the restriction of the Order in Council. Restitution accordingly, with captors' expenses. *The Lucy, Taylor, Edwards, 122.*

See NATIONAL CHARACTER,  
cap. III. sect. 2. 4.

(b) *In blockaded ports.*

44. A purchase of a prize vessel by a neutral of the enemy in a blockaded port is illegal. *The Speculation, Eberhard, Edwards, 346.*

See BLOCKADE, cap. XIII.  
sect. 4. div. (b), and cap. XIV.  
sect. 1.

3. *Under purchases by British subjects from the enemy.*

45. A purchase by the owner in a neutral country of his ship condemned as prize by an enemy is illegal, as being a ransom. *Havelock v. Rockwood (1799), 8 T. R. 268.*

46. If a British ship, captured by an enemy, be afterwards purchased by a subject of this realm, she is still the property of the person from whom she was captured. *Woodward v. Larking, 3 Esp. 286. (Eldon.)*

47. If an English subject employ a neutral to purchase a ship or goods for him in the country of the enemy, the neutral is in such a case but the mere agent, and the property must be considered to pass immediately from the enemy to the British subject, and such a transaction would be illegal. If, however, a neutral merchant have *bond fide* purchased a ship or goods lying in the port of a belligerent, he may dispose of such property as freely as if the purchase were made on the high seas and even to a British subject. The locality of the ship will not affect the legality of the sale. *The Samuel, 4 C. Rob. 284. n.*

See *anté*, No. 12.

IX. WHERE DEFECTIVE—HOW CURED.

1. *By lapse of time.*

48. A title to a ship, which may have been originally faulty, becomes unimpeachable by great lapse of time, especially if it stand upon a sale to a neutral. *The Molly, Eadie, 1 Dodson, 395.*

49. After a lapse of ten years the Court will not look minutely into the title of a ship arrested in a cause of possession, or investigate the jurisdiction of the foreign Court in which the vessel was condemned and sold. It will rather supply the defects, should any exist. In such a case the warrant of arrest directed to be superseded, but without costs. *Ibid. 396.*

See LIMITATIONS.

2. *By treaties of peace.*

50. Strictly speaking a treaty of peace quiets all titles of possession arising out of the war *only*, but the revival of any grievances arising before the war is not to be encouraged after the conclusion of a treaty of peace. *The Molly, Eadie, 1 Dodson, 396.*

3. *By other circumstances.*

51. The Court is disposed to pay particular respect to derivative titles when fairly possessed, on the ground that there must be a sequel of transactions continued in a course of time, which shall be held conclusive to cure antecedent defects and to give security to the title of a *bond fide* purchaser. *The Helena, Hislop, 4 C. Rob. 4.*

52. An English ship was taken by Algerines and sold by order of the Dey to a neutral merchant, who again sold it to an English merchant. A suit was instituted by the former owners, suggesting the conversion to have been invalid under such a capture as a piratical seizure. *Held* that the Algerines were not to be considered as pirates to this extent, where the Dey had intervened as legalising the sale, and that the several acts of transfer being *bond fide*, and for an equivalent consideration, had cured antecedent defects, if any. *Ibid. 3.*

53. A defective title by reason of an invalid sentence of condemnation may be cured by a subsequent sentence, though given after the property had passed into other hands, and when the vessel herself was no longer amenable to the jurisdiction of the Court, such valid sentence being *held* to

operate retroactively, so as to rehabilitate the former title. If, however, the title be impeached before the second sentence takes place it may be vitiated. *The Falcon*, *Atkins*, 6 C. Rob. 200.

#### X. OF THE PROOF OF — \*

54. Presumptive proof of ownership of a vessel is not rebutted by evidence of an

antecedent and subsequent registration in another. *Robertson v. French* (1806), 4 East, 190.

55. Property in a ship must be proved by evidence of possession in the plaintiff, his vendors or bailees, accompanied with a certificate of registry. *Pirie v. Anderson*, 4 Taunt. 652., 3 Camp. 240.; and see *Paterson v. Hardacre*, 4 Taunt. 115.

See SHIPS' REGISTERS.

### TRADE WITH THE ENEMY.

#### I. GENERAL CONSIDERATIONS AS TO —, 456.

#### II. BY BRITISH SUBJECTS, 457.

1. *Generally*, 457.
2. *Resident in neutral countries*, 457.
3. *Resident in the enemy's country*, 457.
4. *Parties domiciled in British territory*, 457.
5. *Who may authorize — et contra*, 457.
6. *Exceptions*, 458.

See NATIONAL CHARACTER, *cap. II.*

#### III. BY NEUTRALS, 458.

#### IV. BY THE SUBJECTS OF ALLIES OF THIS COUNTRY, 458.

#### V. COLONIAL TRADE, 458.

1. *Generally*, 458.
2. *Of the relaxations therein allowed by Great Britain*, 459.

(a) *Generally*, 459.

(b) *As dependent on the question of the continuity of the voyage*, 460.

3. *Of the principles applicable to — as to settlements in the East Indies*, 461.
4. *Under extraordinary and privileged contracts with the parent state*, 461.

#### VI. COASTING TRADE, 462.

#### VII. FISHING TRADE, 463.

#### VIII. OTHER CASES, 463.

#### IX. EXEMPTIONS, UNDER TREATIES, FROM THE PENALTIES OF —, 463.

1. *Where allowed — et contra*, 463.

#### X. PRACTICE IN CASES OF —, 463.

See BLOCKADE, CONTINUITY OF VOYAGE, CONTRABAND, LICENCES, NATIONAL CHARACTER, PRIZE.

#### . GENERAL CONSIDERATIONS AS TO — †

1. To constitute the offence of trading with the enemy there must be an act of trading to the enemy country as well as the intention, and therefore where a vessel sailed for a port of the enemy which became British by surrender before her arrival, *Held* that the legal offence was not committed, the intention wanting the *corpus delicti*. *The Abby*, *Murchy*, 5 C. Rob. 251.

2. The conveyance of passengers for hire *held* equivalent to the conveyance of goods for freight, and therefore to be a trading within the prohibitions prescribed by the Orders in Council of 26th April,

1809, prohibiting all trade by neutrals with France. *The Rose in Bloom*, *Olcott*, 1 Dodson, 58.

3. The rule that the port of destination being an interdicted port is to be construed as the port of delivery of the cargo, is one to which the Court has always most inflexibly adhered. A ship having been condemned for a deviation towards an enemy port, the cargo *held* to be involved by such deviation in the fate of the ship. *The Exchange*, *Ledet*, *Edwards*, 39.

4. An alternative destination should be expressed in the ship's papers. *The Concordia*, *Wise*, 1 C. Rob. 120.

5. In questions of false destination the Court holds generally that the certain fact

\* 11. Acts of ownership are *prima facie* sufficient proof of ownership of the vessel. 2 *Park on Ins.* 860.

† 1. The question as to how far a trading with an enemy in time of war is legal is considered and discussed in 1 *Park on Ins.* 507. to 511.

2. The employment of an enemy's licence in a voyage to a neutral country in alliance with the enemy, especially if bought of the enemy in market overt, is a trading with the enemy. *The Julia and cargo*, 1 *Gallison's (AMERICAN) Rep.* 595.



of the vessel being out of her course for the asserted port shall prevail over dubious explanations thereof. *The Franklin, Segerbrath*, 3 C. Rob. 219.

## II. BY BRITISH SUBJECTS.

### 1. Generally.

6. The subject is interdicted from all trade with the enemy of his sovereign unless with the sovereign's special licence, and this rule is not peculiar to the Maritime Law of Great Britain, but is an universal principle of the Law of Nations. Condemnation by reason thereof decreed, but expenses of claimant allowed. Various cases cited, in which condemnation on that ground had been decreed by the Court of Admiralty, and affirmed on appeal, under circumstances of peculiar hardship. *The Hoop, Cornelis*, 1 C. Rob. 196.

7. All property taken in such a trade is confiscable as prize to the captor. *The Nelly, Perrie*, *Ibid.* 219. n.

8. A British vessel ostensibly transferred to a Dane, taken trading with the enemy, condemned, with her cargo involved in the same claim. *The Odin, Hals*, *Ibid.* 248.

9. It is unlawful for British subjects to trade with the enemy without the consent of the Crown by licence, Order in Council, proclamation, or act of parliament. The act of 45 Geo. 3. does not authorize such a trading. An averment of their ignorance of such law will not protect parties from the consequences of such illegality. *The Charlotta, Dupleix*, 1 Dodson, 387.

10. A foreign ship condemned by reason of a trading between British subjects, owners of the cargo, and the enemy, though the British Government had followed a course of practice which had led the parties into a misapprehension as to the illegality of such trading. The case was, however, recommended by the Court to the equitable consideration of the Government on that ground. *Ibid.* 393.

11. Trading with an enemy without the King's licence is illegal, and it is illegal for a subject in time of war, without the King's licence, to bring, even in a neutral ship, goods from an enemy's port which were purchased by his agent resident in the enemy's country after the commencement of hostilities, although it may not appear that they were purchased from an enemy. *Potts v. Bell*, 8 T. R. 548., 2 Esp. 612.

12. And although the plaintiff be an English-born subject resident in the hostile country. *Willison v. Pattison*, 7 Taunt. 439., 1 Moore, 133.

13. Property of a British subject shipped to go to the enemy, but through a neutral country or with an intermediate neutral port, *Held* liable to condemnation as being a circuitous trading with the enemy. *The Jonge Pieter, Musterdt*, 4 C. Rob. 83.

### 2. Resident in neutral countries.

14. A person living *bona fide* in a neutral country is entitled to carry on a trade to the same extent as the native merchants there, provided it be not inconsistent with his native allegiance. *The Emanuel, Soderstrom*, 1 C. Rob. 302.

15. A British subject resident in a neutral country may engage in trade with the enemy of this country, but not in articles of a contraband nature, the duties of allegiance travelling with him so as to restrain him to that extent. *The Neptunus, Bachman*, 6 C. Rob. 409.; *The Ann, Smith*, 1 Dodson, 223.

16. A British-born subject domiciled in a neutral country is not prevented from trading with a country inimical to this. *Bell v. Reid*, and *Bell v. Buller* (1813), 1 M. & S. 726.; *S.P. Marryatt v. Wilson* (1799), 1 B. & P. 430.

### 3. Resident in the enemy's country.

17. Commerce by a person resident in an enemy's country, even as representative of the Crown of this country, is illegal and the subject of prize, however beneficial to this country, unless authorized by licence. *Ex parte Baglehole*, 18 Ves. jun. 528., 1 Rose, 271.

### 4. Parties domiciled in British territory.

18. A ship and cargo taken on a voyage from Madras to the Spanish settlement of Manila, and claimed on behalf of American merchants resident at Madras, suggesting that such trade was authorized by the British authorities in India, and was beneficial to British interests there, condemned as the property of British subjects taken in trade with the enemy, the Lords of Appeal holding that, admitting such suggestions to be proved, as it was in the power of the Crown alone to declare war, so it rested with that authority only to dispense with its operations. Claimants' expenses allowed. *The Angelique, Streng*, 3 C. Rob. Appendix B.

### 5. Who may authorize — et contra.

19. The Lord Lieutenant of Ireland cannot by proclamation or otherwise au-

thorize a trading of British subjects with the enemy. *The Charlotta, Duplex*, 1 Dodson, 391.

*See ante*, No. 18.

### 6. Exceptions.

20. The case of a shipment made from the enemy's country by a person who had been resident there as a British consul and purchased the articles in question for the supply of the British fleet, *Held* an exception to the general rule. *The Madonna Delle Gracie, Copenzia*, 4 C. Rob. 195.

*See LICENCES.*

## III. BY NEUTRALS.

21. A neutral ship may lawfully carry enemy's property from its own to the enemy's country, the voyage and commerce not being of a hostile description, nor otherwise expressly or impliedly forbidden by the law or policy of this country, though the neutral thereby subjects his ship to be detained and carried into a British port for the purpose of search. *Barker v. Blakes*, 9 East, 283.

22. Claims of neutral owners to vessels taken as prize, pronounced against by reason of trade with the enemy. *The Vigilantia, Gerritz*, 1 C. Rob. 1.; *The Embden, Meyer*, Ibid. 16.; *The Endraught, Broetjas*, Ibid. 19.; *The Welvaart, Cornelis*, Ibid. 122.; *The Jemmy, Nosten*, 4 C. Rob. 31.

23. An enemy's vessel ostensibly transferred to a neutral, but continuing in the enemy's trade, manned by subjects of the enemy, and sailing from and to an enemy's port, condemned, the Court holding the transfer to be collusive. *Semble*, condemnation would have followed under such circumstances, even had the transfer been *bonâ fide*. *The Vigilantia, Gerritz*, 1 C. Rob. 1.; *The Embden, Meyer*, Ibid. 17.

24. Trading to a French enemy port as an adopted ship makes a neutral ship lawful prize. *Berens v. Rucker*, 1 W. Black. 314.

25. In time of war Switzerland and other

interior countries are allowed to export and import through an enemy's port, but strict proof of property is required. *The Magnus, Sorensen*, 1 C. Rob. 32.

26. A neutral ship carrying native produce to an unfavourable, but not at that time a declared hostile port, restored. *The Concordia, Wise*, Ibid. 119.

27. Cargo shipped for neutral merchants between enemy ports, but with a colourable destination to a neutral port, condemned. *The Carolina, Hartman*, 3 C. Rob. 75.

*See NATIONAL CHARACTER, cap. II., FURTHER PROOF, cap. III., NEUTRALS, cap. I. and II.*

## IV. BY THE SUBJECTS OF ALLIES OF THIS COUNTRY.

28. The Court of Admiralty, as the Court of one belligerent power, will not go quite so far as to condemn cargo of a purely inoffensive nature claimed by a citizen of an allied power, engaged in carrying on a war against their common enemy, on the ground of a trading with the enemy of his sovereign, although the facts might constitute such a trading. *The Stadt Embden, Jacobs*, 1 C. Rob. 29.

29. Trade with the enemy on the part of a subject of an ally in the war subjects his property, so engaged, to condemnation in the Prize Court of the captor's country. *The Nayade, Mertz*, 4 C. Rob. 251.

30. Ship and cargo belonging to subjects of an ally, the cargo being military stores for the service of the war against the common enemy, proceeded against on the ground of the port of shipment, and in which the owner resided, being in possession of the enemy, restored. *The Santa Anna, Larinago*, Edwards, 180.

## V. COLONIAL TRADE.\*

### 1. Generally.

31. A ship going from the mother country of the enemy to their colony, under

\* 3. The general principle applied to cases of trading with the colony of the enemy by neutral merchants has been, that the fundamental maxim of the trade being founded on a system of monopolising to the parent state the whole trade to and from her colonies in time of peace, it is not competent to neutral states in time of war to assume that trade on particular indulgences or on temporary relaxations arising from the state of war, and that such a trade is not therefore entitled to the privileges and protection of a neutral character. (*See*

*1 Park on Ins.* 509.) The application of this general rule, however, has from time to time been qualified by some relaxations, upon the extent and legal effect of which, rather than on the existence or fitness of the general principle itself, the discussions which have taken place on these subjects have principally turned.

These relaxations have been as follows:—

During the war between England and America, and the powers of Europe which interfered therein, the principle was altogether intermitted on the

false papers and a false mask, and coming back again to the mother country, will be subject to confiscation by the other belligerent taking her, notwithstanding the clearest evidence of neutral property. *The Calypso, Speck*, 2 C. Rob. 154.; *S. P. The Phoenix, Susini*, 3 C. Rob. 186.; *The Star*, Ibid. 193. n.

32. Neutral property, passing in direct voyages between the mother country of one enemy and the colony of another enemy, is liable to condemnation. *The Rose, Young*, 2 C. Rob. 206.

33. And this whether the trade be opened to the neutral by the enemy or not. *The Immanuel, Eysenberg*, Ibid. 205.

34. Such a cargo so shipped condemned accordingly, but under the circumstances ship restored without freight. *Ibid.* (*But see No. 37., infra.*)

35. A neutral ship and cargo, taken trading between the settlement of one enemy and the colonial possession of an allied enemy, condemned, as included under the principle of a trade between the colony of the enemy and the parent state, which is illegal. *The New Adventure, and also The Oxolen* (before the Lords of Appeal), 4 C. Rob. Appendix A. p. 4. note.

36. Cargo on board a neutral ship seized on a voyage from a colony of the enemy to the mother country, notwithstanding an asserted deviation from such destination, but under compulsion of a *vis major*, condemned. Ship restored, but without freight. *The Minerva, Andaulle*, 3 C. Rob. 229.; and *The Anna Dorothea*, Ibid. 229. n.

37. The illegality of such voyages held, however, subsequently, by the Lords of Appeal, to attach as strongly on the ship as the cargo, and the ship also condemned accordingly. *The Jonge, Thomas*, 3 C. Rob. 232. n.

38. By the general Law of Nations it is not competent to neutrals to assume in time of war a trade with the colony of the

enemy, which was not permitted in time of peace. Therefore a neutral ship and cargo taken going from a colony of the enemy to a port of Europe, not being a British port nor a port of the country to which either the ship and cargo belonged, (which trade, though suggested by the claimant to have been during peace an open trade, the Court held itself bound, under the general rule of maritime states, and in the absence of proof to the contrary by the claimant, to consider as an exclusive trade monopolised by the parent state), condemned on the ground of such trade being a breach of the general Law of Nations, and not within the limits of the relaxations of the general law allowed by the Government of this country. *The Whilhelmina, Otto* (before the Lords of Appeal), 4 C. Rob. Appendix A. p. 4. and note, pp. 12, 13.

## 2. Of the relaxations therein allowed by Great Britain.

### (a) Generally.

39. A neutral ship can lawfully go from her own port in Europe to the colony of an enemy, and there lade a cargo and return with it to her own port. Restitution in such a case. *The Providentia, Hinch*, 2 C. Rob. 142.; *The Immanuel, Eysenberg*, Ibid. 197.; and see *The Margaretha Magdalena, Predborn*, Ibid. 138.

40. Neutral (American) ships taken on a voyage from an enemy colony to a neutral island, both in the West Indies, though not the port of the proprietors of the ship or cargo, restored. *The Hector, Smith, and The Sally, Hess* (before the Lords of Appeal), 4 C. Rob. Appendix A, pp. 14, 15, and note.

41. But an European neutral ship and cargo taken on a voyage from an enemy colony to a neutral (American) port condemned. *The Lucy, Glover*, Ibid. 14.

ground that France had professed, shortly before the war, to have opened her colonial trade to neutrals. The event, however, proved the falsehood of that representation, France having on the close of the war resumed the monopoly of her colonial trade, and therefore on the commencement of the war of 1793, the antecedent practice was restored. (See *Nancy, Joy*, 3 C. Rob. 82., and *Anne, Lord*, Ibid. 91. n.)

The relaxations since adopted originated chiefly in the change that took place in the trade of that part of the world since the establishment of an independent government on the continent of America. In consequence thereof, American vessels had been admitted to trade in some articles, and on certain conditions, with the colonies of this country

and of France, but the American trade being still seriously abridged by the old practice, the prohibition was in January, 1794, restricted to vessels laden with the produce of enemy's colonies, and coming directly therefrom to any port in Europe. In consequence of this relaxation in favour of Americans, a similar liberty of resorting to the colonial market for the supply of their own consumption was conceded to the neutral states of Europe, and the prohibition was accordingly further restricted to vessels laden with the produce of enemy's colonies and coming directly therefrom to any port in Europe, not being a port of Great Britain, nor of the country to which such ships (being neutrals) belonged. See 4 C. Rob. App. A. pp. 2, 3.

42. A neutral vessel taken on a voyage from the colony of the enemy to the mother country (a trade not permitted to the neutral in time of peace), but prior to the issuing of the Government instructions of November, 1793 (by which the relaxations allowed during the American war from the old practice, which prohibited the intervention of neutrals in the colonial trade of the enemy, were annulled, and the old practice restored), and claiming restitution on the ground that no previous notification had been made of the intention of Government to return to the original practice (under which, on the authority of the case of *The Wilhelmina, Otto*, before the Lords of Appeal, the ship and cargo would be confiscable), condemned, as also the cargo. *The Charlotte, Coffin* (before the Lords of Appeal), *Ibid.* 13.

43. The Orders in Council of 24th June, 1803, limiting the trade of neutrals from the colonies of the enemy to a port of the country to which the ship belonged, *Held* to sanction a return voyage to Hamburg, of a ship belonging to Altona, those ports being in such close juxta-position and familiar commercial intercourse with each other. Restitution accordingly. *The Conferenzzrath, Baur*, 6 C. Rob. 362.

(b) *As dependent on the question of the continuity of the voyage.*

44. A cargo belonging to a neutral, and which had been exported from the enemy's colony into the neutral country, seized on its voyage to the mother country of the enemy, and proceeded against as prize, on the ground of the importation into the neutral country (America) being colourable only to disguise the trading between the colony and mother country of the enemy, restored, the Court holding the importation to have been *bonâ fide*; but further proof having been required, captors' expences allowed. *The Polly, Lasky*, 2 C. Rob. 361.

45. Goods shipped at a neutral port for the colony of the enemy, but afterwards entered at a port of the enemy, where the ship had stopped, and where part of the cargo was taken out and sent back to the neutral port, similar goods being placed on board in lieu thereof; *Held* (but as to that part only of the goods originally shipped), to be entitled, under the general prize Law of Nations, to be considered as exported direct from the neutral port, the original place of their shipment. *The Immanuel, Eysenberg*, *Ibid.* 197.

46. An American vessel taken bringing a cargo of produce from the Havannah to Hamburg, merely touching in America for fresh papers without landing the cargo or paying duties, condemned, as also the cargo, the touching in America being *held* to be a colourable and collusive, and not a *bonâ fide* importation, and the voyage direct from the Havannah to Hamburg being illegal under the general Law of Nations. *The Mercury* (before the Lords of Appeal), 4 C. Rob. Appendix A. p. 6.

47. In a similar case in which the ship had touched at Philadelphia for repairs, and the cargo had been entered for exportation, and afterwards taken on board again, the Court directed further proof to be made of the nature of the importation into America. *The Eagle, Weeks*, *Ibid.*

48. A neutral (American) ship which had come from the Havannah to New Providence with a cargo of colonial produce, and was seized while proceeding with a considerable part of that cargo to an enemy port (Amsterdam), and proceeded against as for a continuous voyage from the colony of the enemy to the port of another country than that to which the ship belonged, permitted upon the facts to give further proof of an averment of an intention of selling in America, which was not shown to be inconsistent with any circumstance in the evidence, the former voyages being clear of suspicion, the ultimate destination not being to the mother country of the colony, and the whole of the cargo not having been reladen. Restitution subsequently on further proof. *The Maria, Jackson*, 5 C. Rob. 365.

49. The mere touching at an intermediate port, whether of the country to which the vessel belongs or any other, without importing the cargo into the common stock of that country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering the cargo at the ultimate port. *Ibid.*

50. Where the destination is not to the mother country of the colony, it may not make a different rule of law applicable, but as evidence of intention it has some weight. *Ibid.*

51. In a case on the continuity of a voyage from the colony of the enemy to the mother country, landing and payment of import duties, though a strong ground of presumption of an intention to import, is not conclusive evidence of importation

sufficient to destroy the continuity of the voyage. *The William, Trefry*, Ibid. 385.

52. A ship took on board a cargo at the enemy's colonial port, and carried it to her home port in America, where it was entered at the Custom House, the duties secured, &c. and then reshipped in the same vessel for the mother country of the enemy; the Court, however, was not satisfied that it was the intention of the claimants to import into America before the ship arrived at her home port, but considered that they had changed such determination, if they ever had it, before the arrival, and concluded to send her on to the enemy's country for higher prices than they could get at home: *Held*, that the continuity of the voyage was not broken by the entry, &c. at the home port. Condemnation accordingly. *Ibid*.

53. Perishable commodities carried from the enemy's country to a neutral port, with a *bona fide* intention of disposing of them in that port, permitted to be exported to the enemy's colonies in consequence of their being unable to be sold as intended. Restitution of ship and cargo, with captors' expenses, decreed, reversing the decision of the Vice-Admiralty Court of New Providence condemning ship and cargo by reason of such trading. *The John, Mosher*, 1 Acton, 39.

54. Plea of distress set up to account for a neutral trading from the colony of the enemy, putting into a port of the mother country, *Held* on facts not to amount to a sufficient excuse for so doing. Ship and cargo condemned accordingly. *The Star*, 3 C. Rob. 193. n.

See CONTINUITY OF VOYAGE.

### 3. Of the principles applicable to—as to settlements in the East Indies.

55. The general principle is not so strictly applied to trade with the European settlements in the East as in the new world, as the trade to the East has been generally open to neutrals. *The Juliana, Carstens*, 4 C. Rob. 328.

56. Trade with the French colony of Senegal *held* to have been sufficiently opened by the French to neutrals before the war, to exempt a vessel so trading from the operation of the principle applied to the colonial trade of the enemy, under which property taken in trade between the mother country and colony of the enemy is *held* liable to confiscation. Restitution; captors' expenses allowed. *Ibid*.

57. Neutral ships captured and proceeded against as trading between Batavia and the Isle of France, which it was contended by the captor were colonial settlements of the enemy, restored (reversing the decision of the Vice-Admiralty Court in Ceylon), on the ground that the captor had failed in proof of the illegality of a trade with these settlements, as being of a close colonial nature, and to which in time of peace neutrals were not permitted to trade generally. Captors' expenses in both Courts allowed. *The Patapsco, Hall*, 1 Acton, 270.

58. A neutral ship took in a cargo at Batavia, for account of the Batavian government, and entered into an engagement to carry the same, with three persons in a civil capacity, to Decuma, a Dutch factory at Japan, with a proviso, that should war break out between the Dutch and her government, she should be free from capture or detention on her return; and that on her part she should do her utmost to protect and safely convey the property to its destined port: *Held*, that such a transaction was a violation of the Orders in Council of 7th January, 1807, and 4th November, 1807, forbidding trade by neutrals between enemy ports, and also from colonies of the enemy, and a departure from the neutral character. Condemnation on such grounds affirmed on appeal. *The Rebecca, McNeil*, 2 Acton, 119.

### 4. Under extraordinary and privileged contracts with the parent state.

59. Where there are contracts privileged by the government of the enemy, giving the neutral a right to trade with the colony, the property will in general be condemned. *The Anna Catharina, Wupper*, 4 C. Rob. 107.; *The Rendsborg, Nyberg*, Ibid. 121.

60. A contract with the superintendent of the Spanish settlements at the Caraccas, the effect of which was to give a privileged monopoly of the tobacco trade of those settlements for three years, guarded by other privileges of a high nature, *held* to confer the entire benefit of a Spanish character, *quoad* that transaction, on an otherwise neutral merchant, more especially where he had a stationed resident agent at the Caraccas for the purpose of facilitating the performance of the contract. *The Anna Catharina, Wupper*, Ibid. 118.

61. Several cargoes were taken on a voyage from Batavia to Copenhagen, and claimed by a neutral Danish merchant as

forming part of very large portions of the commodities of that settlement, purchased by him under contracts with the Dutch East India Company, who were entitled to the exclusive trade with that settlement, under peculiar privileges, transferred in those contracts to the neutral. Such contracts being of a gigantic nature, of the magnitude of extraordinary speculation, far beyond the bounds of ordinary commerce, and having been manifestly entered into by the Dutch belligerent solely in consequence of the distress to which he was reduced by the war, *Held* to be illegal, as substituting the neutral in the place and for the relief of the distressed belligerent, with all the rights and privileges of a peculiarly favoured corporation belonging to the belligerent country. Cargoes condemned accordingly. *The Rendsborg, Nyberg*, Ibid. 121.

#### VI. COASTING TRADE.

62. Neutrals are not to trade on freight between the ports of the enemy. Freight and expenses to a neutral ship engaged in the coasting trade of the enemy refused. *The Emanuel, Soderstrom*, 1 C. Rob. 302.

63. A neutral ship taken engaged in the coasting trade of the enemy (France), which was alleged to be expressly forbidden to neutrals by French ordinance (but it was uncertain how far such regulations had been carried into execution), decreed to be restored. *The Speculation, Feroe*, 2 C. Rob. 293.

64. In England and most other European countries the coasting trade has not been open to foreign vessels. Habitual employment in the coasting trade of the enemy will stamp a neutral vessel with the hostile character. *The Welvaart, Cornelis*, 1 C. Rob. 124.

65. Condemnation by reason of such a trading with false papers. *The Johannah Tholen, Osterlo*, 6 C. Rob. 72.

66. Carrying on the coasting trade of the enemy with false papers is cause of condemnation. So *held*, notwithstanding the asserted declarations of France, holding out an assurance that foreign vessels should be admitted into the coasting trade of that country as a permanent regulation. *The Ebenezer, Christensen*, Ibid. 252.

67. A neutral ship sailed with a cargo from an enemy port for a neutral port, at which she stopped only three days, for fresh papers, and without unloading any part of her cargo, which purported in such

papers to have been there laden, then proceeded to another port of the same enemy, on which voyage she was captured. *Held*, that such a transaction was a continuous voyage in the coasting trade of the enemy, notwithstanding the colourable interposition of the neutral port. Condemnation of cargo accordingly. The ship having been previously restored by consent, application to pronounce against the claim of freight and expenses rejected, on the ground that it was possible that the owner of the ship might not have been cognisant of the intention under which the original destination was continued. Freight and expenses given accordingly. *Ibid.* 250.

68. In a similar case, but where the ship had lain five weeks in the neutral port, and there did not appear to have been any intention of imposing a false impression respecting the shipment, restitution. *The Schoone Sophie*, Ibid. 251. n.

69. On the question of the legality of a voyage, the mere transshipment and sale of a cargo at an intermediate port does not break the continuity of a voyage, which can only be effected by a previous actual importation into the common stock of the country where the transshipment takes place. Condemnation as for a continuous voyage between enemy ports. *The Thomyris, Russell*, Edwards, 17.

70. A ship on a voyage from Marseilles to Tranquebar, as asserted, but captured attempting to enter the Isle of France, under pretext of distress not established, condemned as for a voyage originally destined from Marseilles to the Isle of France, and as such not entitled to a more favourable construction than that applied to the coasting trade of the enemy under false papers. *The Two Brothers, Seabury*, 2 Acton, 38.

71. An American ship, after discharging her outward cargo at Batavia, proceeded from thence to Samarang, another Dutch port in the island of Java, where she took in a cargo of coffee, with which she was proceeding back to Batavia when captured: *Held* that the presumption was that she was going to Batavia for the purpose of discharging her cargo, and that such presumption was not rebutted by the evidence in the cause. Ship and cargo, therefore, condemned (affirming the sentence of the Vice-Admiralty Court at Bombay) as engaged in the coasting trade of the enemy, prohibited by the Order in Council of 7th January, 1807. *The Cora, Van Allen*, Ibid. 44.

72. The privilege of free ship free goods under the Dutch treaty *held* to apply to coasting voyages. *The Yonge Jan, Block, and other ships*, 6 C. Rob. 42. n.

#### VII. FISHING TRADE.

73. Some persons emigrated from Nan-tucket to France, and there carried on a fishery very beneficial to the French. The property of a partner domiciled in France was condemned; the property of another partner resident in America was restored. *The Ospray, cited in The Vigilantia, Ger-ritz*, 1 C. Rob. 14.

74. In former wars it has not been usual to capture small fishing boats, but this rule was a rule of comity only, not of legal decision. If brought in, they may be condemned in like circumstances with other vessels. Fishing boats employed in the enemy's trade condemned as prize accordingly. *The Young Jacob and Johanna, Visser*, Ibid. 20.

75. Neutral property employed in the whale fishery of France, at war with England, condemned. *The Susa, Hussey*, 2 C. Rob. 251.

#### VIII. OTHER CASES.

76. Cases of condemnation of ships and cargoes on the ground of a trading in violation of the prohibitory act, with the American states, then colonies of, but in a state of revolt from, this country. *William and Grace*, and cases therein cited, Hay & Marriott, 76.; *The Belle Savage, cited in The Friendship*, Ibid. 79.; *The Sally*, Ibid. 83.

77. Cases of restitution, notwithstanding such a trading and the statute, on the ground of peculiarly favourable circumstances applying to them. *The Friendship*, Ibid. 78.; *The Commerce*, Ibid. 80.; *The Rebecca*, Ibid. 197.

78. Cargo belonging to British subjects, going in a neutral ship to an enemy port, restored to the claimants, the goods having all been laden before the declaration of hostilities, and there being a contingent destination to a British port; (but see the case of the Spanish Register ships there cited.) *The Jeane Isabelle*, Ibid. 186.

79. A neutral ship left Bremen on the Weser for the river Jade in ballast, and having there shipped her cargo, which had been previously sent over in lighters from Bremen, for the purpose of being shipped for America under a charterparty with the ship made at Bremen, was captured whilst on her voyage to America: *Held*

that the cargo's being brought through the mouth of the Weser, then under blockade, for the purpose of being shipped for exportation, would subject it to be considered as taken on a continued voyage, and as liable to all the same principles that are applied to a direct voyage, of which the *terminus à quo* and the *terminus ad quem* are precisely the same as those of the more circuitous destination, and that ship and cargo were liable, under the general law, to condemnation accordingly. *The Maria, Monses*, 6 C. Rob. 201., and *Charlotte Sophia, Moller*, Ibid. 204. n.; *S. P. The Lisette, Steg*, Ibid. 394.

80. But his Majesty's permission granted to the city of Bremen for lighters to navigate between the rivers Jade and Weser with innocent cargoes, notwithstanding the blockade, *held* to justify the particular trade in which the ship was engaged: restitution of ship and cargo accordingly, on payment of captors' expenses. *Ibid.*

81. A voyage from an enemy to a neutral port, but with directions to put into a British port to obtain a licence, *held*, the proof of such directions and consequent intention being clear, not to be illegal, or a breach of the Order in Council of January, 1807: restitution accordingly, with captors' expenses. *The Mercurius, Harmens, Edwards*, 53., and *The Minna, Traab*, therein cited.

*See PRIZE, cap. III.*

#### IX. EXEMPTIONS, UNDER TREATIES, FROM THE PENALTIES OF —

##### 1. *Where allowed — et contra.*

82. Freightage a ship to the enemy is not the lending contemplated in that clause of the treaty between England and Sweden of October 21, 1661, art. 11., which forbids the subjects of either power to sell or lend their ships for the use and advantage of the enemies of either. The meaning was, that they should not give up the use and management of their ships directly to the enemy, or put them under his absolute power and direction. *The Ringende Jacob, Kreplien*, 1 C. Rob. 89.

83. The privilege of free ship free goods under the Dutch treaty *held* to protect the cargo of a Dutch ship going from one enemy port to another enemy port. *The Catherina Joanna*, 6 C. Rob. 42. n.

#### X. PRACTICE IN CASES OF —

84. The general rule is, that where the

shipment is from the port of one enemy to the port of another enemy, a double correspondence should be exhibited, because there is a double interest to be rebutted; but where the trade is from the port of the enemy to a neutral port, the correspond-

ence with the shipper is all that is usually required. In the latter case an objection on further proof, that no correspondence with the consignee had been exhibited, overruled. *The Vreede, Ohlsen*, 5 C. Rob. 231.

## TREATIES.

### I. OF THE CONSTRUCTION OF —

1. *Generally.*
2. *The treaties for the liquidation of British claims on France.*
  - (a) *Of the jurisdiction of Courts as to* — see COURTS.

### II. OF THE RATIFICATION OF —

### III. OF THE EFFECT OF —

### IV. OF THE POWERS OF PLENIPOTENTIARIES.

### V. OF THE PARTIES ENTITLED TO CLAIM THE PRIVILEGES OF — ET CONTRA.

### VI. OF THE PRIVILEGES CONFERRED BY —

1. *In cases of blockade* — see BLOCKADE.
2. *In cases of contraband* — see CONTRABAND.
3. *In cases of recapture* — see RECAPTURE.
4. *In cases of trade with the enemy* — see TRADE WITH THE ENEMY.
5. *In other cases of prize* — see PRIZE.

### VII. OF THE TREATIES BETWEEN GREAT BRITAIN AND FOREIGN NATIONS FOR THE SUPPRESSION OF THE SLAVE TRADE — see SLAVE TRADE.

### I. OF THE CONSTRUCTION OF —

#### 1. *Generally.*

1. In the construction of treaties of this description (for the protection of British subjects trading to the Ottoman Porte, *temp.* Charles 2.), it is not to be expected that the same nicety of strict definition as in modern documents will be found. It has never been the habit of those engaged in diplomacy to use legal accuracy, but rather to adopt more liberal terms. In construing such treaties all the historical circumstances attending them are to be looked at, in order to ascertain what was the true intention of the contracting parties, and to give the widest scope to the language of the treaties, in order to embrace within it all the objects intended to be included. *Maltass v. Maltass*, 1 Rob. (Eccl.) 76.

#### 2. *The treaties for the liquidation of British claims on France.\**

2. A state having, in violation of a

treaty, issued a decree, confiscating all the debts due to the subjects of its enemy, *held* that the confiscation was complete of a debt, which a subject of the confiscating state acknowledged before the proper authorities to be due from him to a subject of the enemy, although he was excused from actually paying it over to the state, and the decree of confiscation was subsequently repealed. After the repeal of the decree of confiscation, the debtor paid into the national treasury of the confiscating state, in the name of his creditor, the amount of his debt in the currency of the time, which, however, was very much depreciated since the date of his declaration of his debt under the decree of confiscation: *Held*, that the confiscating state having entered into a treaty to make compensation for all undue confiscations and sequestrations, was answerable for the debt in the currency at the time of the debtor's declaration, it not being a case between a debtor and creditor, but of reparation by a wrong-doer, involving re-

\* 1. The 59 Geo. 3. c. 31. gives the requisite powers to commissioners to carry into effect con-

ventions for liquidating claims of British subjects and others against the government of France.



*stitutio in integrum. Pilkington v. Commissioners for claims on France*, 2 Knapp. 7.

3. A loss arising from a forced loan to a government, which loan was afterwards nominally repaid by it in a depreciated currency, is such a loss as entitles the lender to compensation from that government, under a treaty providing compensation for losses by illegal confiscation or sequestration. *Johnston's Case*, 2 Knapp. 337.

4. The French government having, in consequence of a decree confiscating the property of British subjects, seized the books and papers of a British mercantile house, amongst which were the debentures for certain stock the property of the house, but standing in the names of a French subject, their clerk, afterwards executed for high treason: *Held* that the partners of the house were entitled, under the treaty between this country and France providing compensation for losses sustained by the illegal confiscations of France under such decree, to compensation for the loss of such stock by such seizure, the stock being held on the facts to have been confiscated by the French government, as being British property, under the information conveyed to them by the seizure, and not as being the property of the clerk, a traitor; *Held* also that if such facts had not been conclusive of the mode of confiscation, the confiscation was consummated by the edict and its consequences. *Genesse's Case*, *Ibid.* 345.

5. A British merchant went over to France to collect his debts, and when there was seized and imprisoned as a British subject, whereby he was prevented recovering them. He was afterwards released and was then paid his debts, but in a less valuable currency than he would have been paid them if he had not been prevented by his imprisonment from recovering them at once. *Held* that such a loss did not entitle him to compensation under a treaty providing it to British subjects for the value of their property movable or immovable illegally confiscated by the French government, as also for the total or partial loss of their debts or other property illegally detained under sequestration since the year 1793; such loss being held to be a consequential damage arising from the imprisonment of his person and not from the sequestration of his goods, and therefore not within the stipulations of such treaty. *Saloin's Case*, *Ibid.* 350.

6. Under the same treaty, *Held* that the mere circumstance of a French debtor having, in consequence of a decree confiscating all debts to British subjects, made a declaration to the French government of his debt to a British creditor, is not sufficient to entitle that creditor to compensation for the loss of it, unless there is evidence of the French government having done some act respecting it. *De Tastet's Case*, *Ibid.* 358.

7. Under the same treaty, *Held* that in order to establish a claim to compensation for a loss under a French decree confiscating all debts, it must be shown that the confiscating government exercised some control over the debt in question, and that an entry under the hands of two of the members of the Council of Surveillance in the debtor's books, certifying that they had been indorsed and marked by them at the desire of the *procès verbal*, did not constitute such a dealing with the debts under the decree of confiscation as to entitle the creditor to indemnification under the treaty as for a confiscation of the debts by the French government. *Bourdieu's Case*, *Ibid.* 353.

8. Under a treaty providing compensation for losses of movable and immovable property unduly confiscated by the French government, *Held* that no compensation was provided for confiscations of immovable property out of the territory or protection of the French government; and therefore that a party who held property in both parts of an island, one part of which belonged to the French and the other to the Dutch, all which property had been confiscated by the French, who ruled the island conjointly with the Dutch, was not entitled to compensation as to that portion of his property situate within the Dutch territory. *Webster's Case*, *Ibid.* 386.

## II. OF THE RATIFICATION OF —

9. According to the later usage of states, a subsequent ratification by the sovereign authority of a treaty signed by plenipotentiaries is essentially necessary to give it validity. The powers of plenipotentiaries are limited by the condition of a subsequent ratification, which is an essential form. A ratification by one power alone is insufficient; the treaty is incomplete until ratified by both powers. *The Eliza Ann and Others*, 1 Dodson, 248.

10. A treaty takes effect from its ra-

tification by the last power, not from its signature by plenipotentiaries. *Ibid.* 250.

### III. OF THE EFFECT OF —

11. Treaties of peace are intended to bury in oblivion all complaints, and if grievances are not brought forward at the time when peace is concluded, it must be presumed that it is not intended to bring them forward at any future time, and the revival of any such grievances is not to be encouraged. *The Molly, Eadie*, 1 Dodson, 396.

12. Strictly speaking, however, a treaty of peace quiets all titles of possession arising out of the war only. *Ibid.*

13. The intervention of a treaty of peace quiets all titles acquired during the war, and as it would not be competent to the former owner of a ship captured before the treaty to look back to the enemy's title, and contest the validity of the sentence or the authority of the Court which pro-

nounced it, so also it is not competent to him to look back to the title when the ship has passed to a neutral purchaser. *The Schoone Sophie, Ariens*, 6 C. Rob. 138.

### IV. OF THE POWERS OF PLENIPOTENTIARIES.

14. Persons not having full powers may make what in law are termed *sponsiones*, or in diplomatic language treaties *sub spe rati*, to which a subsequent ratification may give validity. *Ratihabitio mandato æquiparatur. Hope and Others*, 1 Dodson, 230.

### V. OF THE PARTIES ENTITLED TO CLAIM THE PRIVILEGES OF — ET CONTRA.

15. *Quære*, whether the stipulations of a treaty can be set up by those who were not parties to it. *The Jonge Josias, Jurgensen*, Edwards, 130.

## TRINITY MASTERS.\*

1. The decision in a cause must be strictly founded on the evidence of the facts, but the judgment of Trinity Masters is not to be controlled by evidence with respect to matters of mere nautical practice and experience: upon such points they are to be guided by their own science and knowledge, and not by the opinion of other nautical persons, however numerous or respectable. *The Gazelle, Hurst*, 1 W. Rob. 474.

2. On appeal in a case of joint-capture, the opinion of the Trinity Masters as to the courses, &c. of the ships, deduced from the examination of their log-books, having been impeached; *Held*, that it was necessary to point out obvious neglect on their part to sustain such impeachment, since they must be considered the best judges of such evidence. Further refer-

ence to other parties thereon refused. *Le Bon Aventure, Lamoriniere*, 1 Acton, 237.

3. It is erroneous to suppose that Trinity Masters give their opinion on their own view of a case. It is the uniform practice of the Court to acquaint itself as well as it can with the grounds on which the Trinity Masters proceed, and to understand them to the best of its ability; and if unfortunately the Court should think that they were proceeding on erroneous data, it would most undoubtedly pronounce a judgment differing from them. *The Speed, Ellis*, 2 W. Rob. 230., 7 Jur. 1070.

4. The Judicial Committee would not consider themselves bound by the opinion expressed by Trinity Masters on the hearing of a cause, though approved of by the Judge of the Court of Admiralty, if they thought such opinion erroneous. *The Ge-*

\* 1. In cases in the Court of Admiralty, if the question to be examined depend much upon technical skill and experience in navigation, the parties may, with the permission of the Judge, apply for and obtain the assistance of two or more Trinity Masters, who will at the request of the Court, after hearing all the evidence on each side in open Court,

state the impression which the evidence has made upon them as to which of the ships or parties was to blame, and in what respects, whereupon the Judge so assisted will form his own independent judgment, and decide accordingly. 2 *Chitty's Gen. Prac.* 514.

*neral Steam Navigation Company v. Tonkin (The Friends)*, 4 Moore, 321.

5. On motion to expunge from affidavits matter which had not been embodied in the act on petition, on the ground that the opinions of Trinity Masters might be unduly biassed by such matter, the Court intimated it should reject the motion as to merely irrelevant matters, which should be

objected to at the hearing and not before, but would grant it as to irrelevant matter of so extraordinary a character that the Trinity Masters might have such an undue impression made on their minds as it would be out of the power of the Court to efface at the hearing. *The Speed, Ellis*, 7 Jur. 1068., 2 W. Rob. 230.

### UNLIVERY AND APPRAISEMENT.\*

1. In cases of salvage, unless there be a great disparity between the value as stated by the owners and the actual value, the Court discountenances the taking out a commission of appraisement, and whenever such a commission is taken out, and it ultimately appears that the party taking out the commission has done so in error, the Court will condemn the party in all the costs attending the commission. *The Persian*, 1 W. Rob. 327.; and see *The Britannia, Plash*, 3 Hagg. 153.

2. Salvors are entitled, if they cannot obtain a full valuation of ship and cargo, to a commission of appraisement, and it may be necessary to apply for a commission of unlivery, but the former is an extreme measure, and not to be resorted to except in cases of necessity. Where owners withhold all information on such subjects, that may be a fit occasion for resorting to a commission of appraisement; but if the process of the Court be used without a necessity, the parties suing it out will be held liable to the whole expenses occasioned by it, though they may be otherwise successful in the suit. *The Glasgow Packet, Nicoll*, 2 W. Rob. 308., 8 Jur 675.

3. A vessel and cargo having been arrested in a suit for salvage and bail given, application of the owners to have the ship and cargo released on affidavits that the value thereof was daily deteriorating, opposed by the salvors, who prayed a commission of appraisement, granted by the Court under the circumstances, there being an action for damage to the ship by collision also pending at the suit of the owners, and on

the conditions of the owners making statements of the value in acts of Court, and undertaking to afford every facility to the salvors in another valuation, should the value be further impeached. *Ibid.*

4. On appeal from an award of salvage by magistrates under the stat. 1 & 2 Geo. 4. c. 75. an application on the part of the owners for a second appraisement, though the appraisement before the magistrates was not objected to at the time by them or their agents, granted, though opposed by the salvors, but without prejudice to the cause, and at the expense of the owners. *The Oscar, Lofgren*, 2 Hagg. 258.

5. Application for monition to stop salvors from unloading cargo at an out-port under a decree of appraisement (after bail had been given), granted. *The Sussex, Roxby*, 3 Hagg. 339.

6. A commission of appraisement decreed in the presence of the adverse proctor, without any objection taken on his part, held to be final, although the commission was ordered not to issue under seal for ten days. *Franco and Franco v. Alvarenza and De Pinna*, 1 Lee, 187.

7. Accounts of charges attending the execution of a commission of unlivery and appraisement referred to the consideration of the registrar and merchants as being enormous. *L'Esperance, Stegman*, 1 Dodson, 50.

8. The captor is in the first instance liable for the expenses of the Marshall in executing a commission of appraisement. Where it is taken out for the accommodation of the claimant, it is a matter to be

\* 1. Where there is any dispute as to the value of the property itself, the proper course is to take out a commission of appraisement, but where there is no dispute as to the value, but whether certain

deductions may be made according to law, a commission of appraisement is unnecessary. *The Charlotte, Wylie*, 5 Notes of Cases, 6.

settled between him and the captor. *The Frau Maria, Jansen*, 2 C. Rob. 293.

9. The expenses of unlivery and appraisement in a case of capture, where the ship had been released, having been incurred from a necessity arising out of the cargo, were decreed to fall as a charge on that property. *The Industrie, Rolff*, 5 C. Rob. 88.

10. By Order in Council of 30th April, 1813, it is directed that on claim for restitution on salvage in Vice-Admiralty Courts after recapture, valuation of ship and cargo shall be made by appraisement, without sale or unlivery, unless under special circumstances. 3 Hagg. 445. Appendix B.

11. By Order of Court of 3d July, 1799, it is directed that in all motions for commissions and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decrees shall be made returnable.

12. That the Commissioners and Marshall make regular returns on the days on which their commissions or decrees are returnable, stating the progress that has been made in the execution of the com-

missions or decrees; and if necessary, praying an enlargement of the time for completion of their business.

13. That the Commissioners and Marshall bring in the proceeds which have been collected at the same time with their returns; and that if the whole proceeds have not been collected, they retain only such sums as may be required to answer accruing expenses.

14. That on the return of commissions or decrees, the Commissioners or the Marshall shall bring in all vouchers.

15. That no cause shall be put on the list for hearing where any commission or decree of appraisement and sale is outstanding, and the proceeds not brought into the registry, without special application to the Court to dispense with this order, according to the circumstances of the case.

16. By 46 Geo. 3. c. 43. s. 11., valuations or appraisements in pursuance of orders of any Court of Admiralty, Vice-Admiralty, or of any Court of Appeal therefrom, are exempt from stamp duty.

*See* COMMISSIONERS, MARSHALL.

## VISITATION AND SEARCH.

### I. OF THE RIGHT TO—

### II. OF RESISTANCE TO—

1. *What amounts to— et contra.*

2. *Of the effect of—*

### I. OF THE RIGHT TO— \*

1. The right of visiting and searching merchant ships upon the high seas, whatever be the cargoes, whatever be the destinations, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation. *The Maria, Paulsen*, 1 C. Rob. 360.

2. The authority of the sovereign of the neutral country being interposed in any manner of mere force, as by instructions to his subjects not to submit to visitation and search, cannot legally vary the rights of a

lawfully commissioned belligerent cruiser. *Ibid.*

3. By special covenant, as between America and Holland, *anno* 1782, the right may be restricted, or it may be agreed that the presence of their armed cruisers shall be mutually understood to imply that nothing is to be found in the merchant ships under its convoy inconsistent with amity or neutrality. By the Law of Nations, however, the right of visitation and search cannot be legally met with mere force or resistance. *Ibid.*

4. The right of visitation and search

\* 1. On the right of visitation and search of neutral vessels in time of war, see *Wheaton's Law of Nations*, 145. 391.

does not, according to the Law of Nations, exist in time of peace, or it would be productive of great mischiefs; but it is fully established by the legal practice of nations as existing in time of war, founded on the necessities of self-defence. Belligerents may exercise this right against neutrals for the purpose of ascertaining whether or not they are employed in the service of the enemy, subject to condemnation in costs and damages by way of compensation to the neutral if the inquiry be wrongfully pursued. *Le Louis, Forest*, 2 Dodson, 244. 253.

5. Maritime states have claimed a right of visitation and inquiry within those parts of the ocean adjoining to their shores which the common courtesy of nations has, for their common convenience, allowed to be considered as parts of their dominions for various domestic purposes; but this has nothing in common with a right of visitation and search upon the unappropriated parts of the ocean. *Ibid.* 246.

*In slave seizures — see*  
SLAVE TRADE.

## II. OF RESISTANCE TO —

### 1. *What amounts to — et contra.\**

6. An intention to resist the right of visitation and search voluntarily and clearly abandoned, or even a slight hesitation about it, would not constitute a violation of that right. The averment, however, of an abandonment of intention cannot be set up by neutrals sailing under positive instructions from their government, delivered to, and accepted by them, to prevent by force, if necessary, all inquiry and search, the acceptance of such instructions completing the act of hostility. *The Maria, Paulsen*, 1 C. Rob. 375.

7. Swedish vessels sailing under convoy of a frigate of their own sovereign, with instructions on board both frigate and merchantmen to resist search, and having actually resisted or refused visitation and search by British cruisers, condemned, but claimants' expenses allowed. *Ibid.* 360.,

affirmed on appeal; *S. P. The Elzabe, Maas*, 4 C. Rob. 408.

8. It is a settled principle of law, that resistance to the exercise of visitation and search on the part of the belligerent entails condemnation on the neutral ship; but among the facts necessary to bring the case within the operation of the law, it must be shown that the vessel had reasonable grounds to be satisfied of the existence of a war, otherwise there is no such thing as neutral character, nor any foundation for the several duties which the Law of Nations imposes on that character. *St. Juan Baptista and La Purissima Conception*, 5 C. Rob. 33.

9. Claim of captors for condemnation of neutral property on the ground of resistance to visitation and search pronounced against, the facts being insufficient to support the charge, and the captors having been guilty of delay in proceeding to adjudication. *Ibid.*

10. A mere attempt to escape from commissioned cruisers before any possession assumed has never been held to draw with it the consequences of condemnation. *Ibid.* 35.

11. Every commissioned belligerent cruiser has an undoubted right of inquiry and search of neutral vessels, and it is not the arbitrary decrees of the other belligerent that can abrogate it. On strict principle, to defeat that right by evasion might be as penal as to resist it by force, though it has not been so held in practice; but certainly it is conduct which is always to be viewed with jealousy, and cannot be set up as an excuse advantageous to the parties in any matter requiring explanation of their conduct. *The Mentor, Williams, Edwards*, 209.

### 2. *Of the effect of — †*

12. The penalty for the violent contravention of the right of visitation and search is the confiscation of the property so withheld from visitation and search. Con-

\* 2. A merchant ship which seeks to avoid search by crowding sail or by open force may justly be captured and subjected to confiscation. *Lampredi, del Commercio di Popoli Neutrali*, § 12.

† 3. Resistance to visitation and search on the part of a neutral subjects her to condemnation. *Vattel*, b. 3. ch. 7. s. 114., *Bynkershoek, Quas. Jur. Pub.*, lib. 1. c. 15., *Valin, Ordonn. de la Mar.*, lib. 3. tit. 9. art. 12., *De Martens, Precis*, liv. 8. ch. 7. s. 321., *Manning's Commentaries on the Law of Nations*, cap. 11., *Kent's Commentaries*, p. 153.

4. A neutral may lawfully put his property on board a belligerent ship for conveyance on the ocean; and such property does not lose its neutral character by the vessels being armed or making resistance, provided the neutral do not arm the vessel or aid in the resistance, although he charter the vessel and be on board at the time of the resistance. *The Neride*, 9 Cranch's (AMERICAN) Rep. 388.; but see *The Fanny, Lushington*, 1 Dodson, 443.

demnation of Swedish vessels accordingly under such circumstances. *The Maria, Paulsen*, 1 C. Rob. 360.

13. An armed American vessel having carried on the forced trade on the Spanish main, and while under a British flag seized some vessels for the purpose of ransoming part of the crew which had been detained on shore, &c., on arriving off Macao at-

tempted to resist a British cruiser in the exercise of the right of visitation and search, and was captured after a desperate resistance. Condemnation on the ground of such resistance (affirming the decision of the Vice-Admiralty Court of Bombay). *The Topaz, Nicoll*, 2 Acton, 20.

*See Prize, cap. III. sect. 4. div. (a).*

## WAGES.

### I. GENERAL CONSIDERATIONS AS TO —, 471.

### II. OF THE JURISDICTION OF COURTS GENERALLY AS TO —, 471.

### III. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO —, 471.

1. *Generally*, 471.
2. *With reference to the contract of hiring*, 472.
3. *Where earned infra corpus comitatús*, 473.
4. *Who may sue there for — et contra*, 473.
  - (a) *Alien enemies*, 473.
  - (b) *Masters*, 474.
 

(*Statutory regulations thereon, and the construction thereof*, 474.)

(*By the general law prior to such statute*, 475.)
  - (c) *Masters theretofore mates*, 475.
  - (d) *Mates*, 475.
  - (e) *Surgeons*, 475.
  - (f) *Pilots*, 476.
  - (g) *Other parties*, 476.

### IV. OF THE JURISDICTION OF MAGISTRATES AS TO —, 476.

### V. OF FOREIGN SEAMEN, 477.

1. *General considerations as to —*, 477.
2. *Of the jurisdiction of British Courts as to —*, 477.
3. *Miscellanea*, 478.

### VI. OF THE RIGHT TO —, 478.

1. *Generally*, 478.
2. *Gradation of wages*, 478.
3. *Under agreements for extra services and remuneration*, 479.
4. *During illness*, 480.
5. *In cases of impressment*, 480.
6. *In cases of capture and recapture*, 480.

7. *In cases of detention by foreign powers*, 481.

8. *Where the voyage is not proceeded with*, 482.

9. *Where earned on illegal voyages*, 482.

10. *Where the ship is disposed of abroad*, 482.

11. *Where wrongfully discharged*, 483.

12. *Where the ship is lost*, 483.

13. *Where the ship is lost, but portions thereof are recovered*, 484.

14. *As dependent on the earning of freight*, 484.

15. *In cases of deficiency of provisions*, 485.

16. *By what circumstances barred — et contra*, 485.

(a) *Statutory regulations thereon*, 485.

(b) *Stipulations prior to such statute*, 485.

(c) *Other circumstances*, 486.

17. *Cases of set-off*, 487.

### VII. OF THE FORFEITURE OF —, 487.

1. *General considerations as to —*, 487.

2. *What circumstances will amount to condonation of — et contra*, 488.

3. *Mode of computation of —*, 488.

### VIII. WHAT ACTS WILL WORK A FORFEITURE OF — ET CONTRA, 488.

1. *Mutinous conduct*, 488.

2. *Desertion*, 489.

(a) *Generally*, 489.

(b) *Statutory regulations thereon*, 489.

(c) *What circumstances will amount to —*, 489.

(d) *What circumstances will not amount to —*, 490.

(e) *Of the onus of proof of —*, 491.

3. *Absence without leave*, 492.
  - (a) *Generally*, 492.
  - (b) *After the ship's arrival in port*, 492.
4. *Disobedience of orders*, 493.
5. *Neglect of duty*, 494.
6. *Embezzlement*, 495.
7. *Intoxication*, 495.
8. *Other acts*, 496.
9. *Non-resistance to pirates* — see **Pirates**.

#### IX. OF THE LIEN FOR —, 496.

1. *Generally*, 496.
2. *Of the precedence of* —, 496.
3. *On the ship*, 497.
  - (a) *After sale*, 497.
4. *On post-office packets*, 498.
5. *On freight*, 498.
6. *On cargo*, 498.

#### X. OF THE LIABILITY OF PARTIES FOR —, 498.

1. *Generally*, 498.
2. *Owners*, 498.
3. *Masters*, 498.
4. *Other parties*, 499.

#### XI. OF THE CALCULATION OF —, 499.

#### XII. OF THE ASSIGNMENT OF —, 499.

#### XIII. OF THE PAYMENT OF —, 499.

#### XIV. EVIDENCE IN CAUSES OF —, 501.

1. *As to entries in log*, 501.

#### XV. PRACTICE IN SUITS FOR —, 501.

1. *Limitation of suits*, 501.
2. *As to production of ship's articles*, 501.
  - (a) *Statutory regulations thereon*, 501.
  - (b) *Cases prior to the statute*, 501.
3. *As to references to the registrar and merchants*, 502.
4. *Miscellanea*, 502.

#### XVI. COSTS IN CAUSES OF —, 503.

See **MARINERS, MARINERS' CONTRACTS**.

#### I. GENERAL CONSIDERATIONS AS TO — \*

1. In suits for wages, the Court is anxious that seamen should not be harassed with litigation. It is desirable that questions of wages should be speedily settled. *The Prince George, Shaw*, 3 Hagg. 377.

2. In a suit for wages, service and good conduct are to be presumed unless disproved. *The Malta, Young*, 2 Hagg. 166.

3. A mariner cannot insure his wages. *The Juliana, Ogilvie*, 2 Dodson, 509; *The Neptune, Clark*, 1 Hagg. 239; *The Lady Durham, Stewart*, 3 Hagg. 201.

4. Or perquisites in the nature of wages. *Webster v. De Tastet*, 7 T. R. 157, 1 Park on Ins. 11.

5. But a different rule holds as to the captain, who may insure his commission, privileges, &c. *King v. Glover* (1806), 2 N. R. 206.

#### II. OF THE JURISDICTION OF COURTS GENERALLY AS TO —

6. By 7 & 8 Vict. c. 112. s. 16. no suit

for the recovery of wages, unless they exceed 20*l.*, shall be instituted against the ship, master, or owner, in any Court of Admiralty, Vice-Admiralty, or of Record, unless the owner shall be bankrupt or insolvent, or the ship shall be under arrest or sold by the authority of any Admiralty or Vice-Admiralty Court, or unless any magistrate acting under this act shall refer the case to be adjudged by such Court, or unless neither the owner nor master shall be or reside at or near the port or place where the service shall have terminated, or where any seaman shall have been discharged or put on shore.

#### III. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY AS TO — †

##### 1. *Generally*.

7. The Court of Queen's Bench will not prohibit all or any one of the mariners of a ship from suing in the Court of Admiralty for their wages, for there is no difference

\* 1. The 7 & 8 Vict. c. 112., which repeals the 5 & 6 W. 4. c. 19., which also repealed former statutes thereon, consolidates the laws relating to merchant seamen. (This act is printed in the Appendix.)

2. This act is declared in s. 61. not to extend to

any ships registered or belonging to any colonies of Great Britain, while such ships shall be within the precincts of such colony, or unless engaged on voyages to or from this country or between parts thereof.

† 3. Although mariners' wages are recoverable

where one libels or many, and the reason of mariners being permitted to sue there is not only because there they have the privilege of proceeding jointly, whereas they must sever at Common Law, their contracts being separate; but also because by the Maritime Law mariners have a lien on the ship for their wages, which is a kind of implied hypothecation thereof to them; and they have the ship there as security. *Hook v. Moreton* (1697), Ld. Raym. 398.

8. Seamen may sue jointly or severally in the Admiralty for their wages. *Ibid.*

9. Where there is a suit pending in the Admiralty and at law for the same wages, instead of applying for a prohibition, the pendency of the suit in the Admiralty should be pleaded. *Edmonton v. Franklyn* (1742), Forts. 231.

10. Seamen may sue in the Admiralty Court for their wages earned in fitting out a ship for a voyage, though she do not actually proceed on the intended voyage: prohibition in such a case refused. *Wells v. Osmond* (1703), 6 Mod. 238., 2 Ld. Raym. 1044.; *S. P. Mills and Another v. Gregory*, Sayer, 127.

11. Seamen may sue in the Admiralty Court for the wages of a coasting voyage, as for navigating a vessel from one port of England to another. Prohibition in such a case refused. *Anon.* (1678), 1 Vent. 343., 2 Chitty's Gen. Prac. 521.

12. The Court of Admiralty may decide whether a place at which a ship shall have arrived be a port of delivery, or

such a determination of the voyage as to entitle the seamen to their wages. Prohibition in such a case refused. *Brown v. Bean and Another* (1705), 2 Ld. Raym. 1247.

13. The Admiralty may order the ship, sails and tackle to be sold to pay the seamen their wages. Prohibition in such a case refused. *Edmonson v. Walker* (1690), 1 Show. 177.

14. If the mariners have executed a deed to forfeit their wages under certain circumstances, the Admiralty may try whether the deed was fraudulent or not. *Buck v. Atwood* (1726), Stra. 761.

15. In a suit for wages a protest by the master, alleging that under the 5 & 6 W. 4. c. 19. the seaman had elected the jurisdiction of a magistrate, who had dismissed the claim on the ground of forfeiture by desertion, overruled, the Court holding that the object of the statute was to give to magistrates a summary jurisdiction in cases of mere *quantum* only, involving no legal question. *The Edwin, Robertson*, 3 Hagg. 364.

16. By 3 & 4 Vict. c. 65. s. 4. the High Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel or the proceeds thereof remaining in the registry arising in any cause of wages, &c.

*See post*, No. 164.

## 2. With reference to the contract of hiring.\*

17. A mariner may sue in the Court of Admiralty for his wages, upon a contract

by action at Common Law, and by other more summary means, yet the Court of Admiralty is in many cases the preferable tribunal, particularly where there are several seamen unpaid, or where the owners of the vessel are insolvent. 2 Chitty's Gen. Prac. 520.

4. Seamen may sue either jointly or singly in the Court of Admiralty, and may either arrest the ship or the proceeds in the registry, and may cite the master or owners personally to answer their suit. *Ibid.*

5. It would seem that although a ship may be in custody of the sheriff under a *feri facias*, yet the seamen may institute a suit in the Court of Admiralty for their wages, and have the vessel arrested under a warrant from that Court, so as at least to prevent any surplus that would otherwise be paid to the owner from being paid over to him, but still subject to the just claim of the execution creditor, and the Court of Queen's Bench will not grant a rule calling on the Marshall of the High Court of Admiralty to pay over the amount of the sum endorsed on the writ of execution, though the Court of Admiralty itself, or the Judicial Com-

mittee of the Privy Council, would decree to that effect. *Ibid.* 521.

\* 6. If the mariners' contract for service be made upon terms and conditions differing from the general rules of law, the service alone cannot entitle the seaman to his wages; his right to them must depend on the performance of the stipulated terms. The construction of the instrument in which those terms are contained is a proper subject for the jurisdiction of the Courts of Common Law, and it is clear by the several authorities on this subject, notwithstanding a seeming dictum in one case (*Beas v. Parre*, 2 Ld. Raym. 1206.) to the contrary, that on the suggestion of such a contract made at land and under seal, supported by the proper affidavits, the Courts at Westminster Hall will prohibit the Court of Admiralty from proceeding in a suit instituted there, but it is not quite clear whether the defendants ought, before applying for a prohibition, to plead the agreement in the Court of Admiralty as a bar to the jurisdiction of that Court. *Abb. Sh.* 659.

7. If, however, the hiring be on the usual terms and made by word of mouth or by writing only,



made on land not being under seal. *The Prince George, Shaw*, 3 Hagg. 379.

18. Application for prohibition to the Court of Admiralty in a suit for mariners' wages, suggested to be founded upon a charterparty made on land, and not *super alium mare*, refused, on the ground that mariners' wages grow due to them for labour done at sea, and that the charterparty and contract at land were only to ascertain the amount. *Coke v. Cretchett* (1681), 3 Lev. 60.; *Smith v. Crosby*, Fort. 230.; *Anon.* (1670), 1 Vent. 146.; *S. P. Anon.* (1679), 2 Show. 86.; *Opy v. Child* (1693), 1 Salk. 31.; *Bayly v. Grant* (1699), 1 Salk. 33.; *Harling v. Brook* (1693), Comb. 255.; and see Com. Dig. Admiralty (E.) 15.

19. Seamen may sue in the Admiralty for their wages, although the contract be for a sum in gross for a given voyage. *Anon.* (1678), 1 Vent. 343., 2 Chitty's Gen. Prac. 521.

20. The Court of Admiralty has no jurisdiction over cases of seamen's wages when founded on extraordinary contracts, or of the nature of a partnership transaction. *The Sydney Cove, Fudge*, 2 Dodson, 11.\*

21. The Court of Admiralty has no jurisdiction to adjudicate on a claim for wages founded, not on the usual mariner's contract, but on a special agreement. A summary petition of the mariner pleading his engagement, not under the mariner's contract, but by letters from the master undertaking for the payment of a specific sum, rejected, the letters being held to amount to a special agreement. *The Mona, Glass*, 1 W. Rob. 137.

22. In a suit for wages preferred by a mariner shipped and hired on board a vessel engaged in the whaling fishery at a certain sum per month, and a certain further sum for every ton of oil which should be obtained in the voyage, and who signed the usual ship's articles or mariners' contract accordingly; Held, that such a contract was a special contract in the nature of a partnership, and therefore not within the jurisdiction of the Court of Admiralty. *The Riby Grove, Dean*, 2 W. Rob. 52.

23. *Semble*, if the special agreement pervade the whole of the contract, the mariner is not entitled to sue in the Court of Admiralty. If, however, a part of the voyage is upon an ordinary contract, and the special agreement is only contingent, the Court will pronounce for that part of the wages which is claimed under the ordinary contract. *Ibid.*

24. A prohibition lies to the Admiralty Court in a suit there for seamen's wages, if the agreement be special or under seal. *Howe v. Napier* (1779), 4 Burr. 1944.; *Campion v. Nicholas* (1720), 2 Stra. 405.; *Opy v. Child* (1693), 1 Salk. 31.; *Day v. Serle* (1733), 2 Barnard. 419., 2 Stra. 969.

25. To oust the Admiralty of its jurisdiction, it must be expressly shown that the contract was by deed. *Benns v. Parre* (1705), 2 Ld. Raym. 1206.

26. On application for prohibition to the Court of Admiralty, in a suit there for the recovery of mariners' wages, on the ground of a special contract, Held, that the defendant might plead the contract in the Court of Admiralty, and if that Court did not allow the plea, the Court of King's Bench might then be moved for a prohibition; but that if it should be granted before the plea was disallowed, it would be a pre-judging of the justice of the Court of Admiralty. *The Mariners' Case* (1724), 8 Mod. 379.

### 3. Where earned *infra corpus comitatus*.

27. Though a pilot is a mariner, yet if he sue for wages for piloting a ship from Sea Reach to Deptford, both within the body of a county, prohibition will lie. *Ross v. Walker* (1765), 2 Wils. 264.

### 4. Who may sue there for — *et contra*.

#### (a) Alien enemies.

28. Alien enemies are at liberty to sue in the Courts of this country for wages earned by them as mariners on a voyage to this country under the protection of a British licence. *The Frederick, Bodom*, 1 Dodson, 266.; *The Maria Theresa, Phillips*, 1 Dodson, 303.

29. But generally alien enemies cannot

and not by deed, the seamen or any one or more of them, and every officer except the master, may sue in the Court of Admiralty, and may by the process of that Court arrest the ship as a security for their demand, or cite the master or owners personally to answer to them. *Ibid.* 656. (and see the several

cases thereon there cited), *Smith's Merc. Law*, 403.

\* 8. Seamen may sue in the Admiralty for their wages, notwithstanding any special agreement or deed for them, until such agreement is disallowed. 2 Mod. Ca. 379.

enforce any claims in the Courts of this country. *Ibid.* And see ALIENS, cap. III. sect. 3.

(b) *Masters.*

(Statutory regulations thereon, and the construction thereof.)

30. By 7 & 8 Vict. c. 112. s. 16. all the rights, liens, and remedies for recovery of wages belonging to any seaman not being a master mariner, shall, in the case of the bankruptcy or insolvency of the owner of the ship, also belong to masters of ships or master mariners, with respect to the recovery of wages due to them from British owners.

31. The word "insolvent," in 7 & 8 Vict. c. 112. s. 16. means a person who has taken the benefit of an Insolvent Debtors' Act, and not one who is merely unable to pay his debts. *The Princess Royal*, 9 Jur. 433.

32. In a suit, therefore, by the master for his wages, brought under this statute, a libel on his behalf, pleading, *inter alia*, that the owner was insolvent, and unable to pay his debts, and had so declared and admitted to divers persons, rejected, as insufficient to found the jurisdiction of the Court under the statute. *Ibid.*

33. The statute as to Bankrupts in Ireland (6 & 7 W. 4. c. 14.) enacts that the filing a declaration of insolvency (in the general sense of the word), and the advertisement of such declaration in the Dublin Gazette, shall constitute an act of bankruptcy; but that no commission of bankruptcy shall issue thereupon unless sued out within two months after the insertion of such advertisement. *Held* that such an advertisement of a declaration of insolvency of the owners of a ship, no commission having issued, and the time limited having elapsed, did not bring such owners within the meaning of the words "bankrupt or insolvent" in 7 & 8 Vict. c. 112.; and that the master of the ship could not, therefore, recover his wages under the sixteenth section of that statute. *The Great Northern*, 10 Jur. 104., 5 Notes of Cases, 71.

34. The Court declined to give costs on the ground that at the time of the arrest the matter was still pending, and that had the commission been then taken out, the owners would have been bankrupts. *Ibid.*

35. The bankruptcy or insolvency of the owner contemplated in the 16th section of 7 & 8 Vict. c. 112. must relate to the person

who was the owner of the ship at the time of the original contract with the master, and against whom an action would lie for the recovery of the wages. There may, indeed, be cases which would create very great difficulty and complexity, as in the case of an owner of a ship dying during the voyage, or of a ship sold during the voyage, and where it would be very difficult to say with whom the contract of the master was made, or whether an action would not lie only in consideration of services actually had and performed. *The Repulse*, 9 Jur. 739.

36. The owners of a ship, in May, 1842, appointed T. M. master, who signed the ship's articles, &c. T. M. was a joint mortgagee of the ship. In June, 1842, after the sailing of the ship, the owners became bankrupts. In January, 1845, the ship was, on her return, sold (with the knowledge of T. M., who did not interfere in such sale) by the mortgagee in possession. *Held*, that T. M. might sue the ship for his wages, under 7 & 8 Vict. c. 112. s. 16. *Ibid.*

37. And that the fact of his being a joint mortgagee would not have the effect of barring the suit; nor, under the circumstances, his knowledge of and non-interference in the sale of the ship. *Ibid.* 738.

38. The 7 & 8 Vict. c. 112. s. 16. giving masters the power of arresting the ship for their wages in cases of insolvency or bankruptcy of the owners, has a retrospective effect in giving such a remedy to masters, notwithstanding their contract with the owners may have been entered into prior to the statute, and notwithstanding the claims of parties against the ship under mortgages executed prior to the statute. *Ibid.* 739.

39. The 7 & 8 Vict. c. 112. s. 16. places masters, in the cases provided for by that act, on the same footing as mariners with reference to bottomry bonds, and they are therefore, in such cases, entitled, like mariners, to be paid before bottomry bonds. *Ibid.*

40. If the master suing for his wages under 7 & 8 Vict. c. 112. s. 16. be a debtor on other accounts to the owner of the vessel, or have funds of the ship in his possession, the Court will only award to him the balance of his wages due on a settlement of the accounts, which it will refer to the registrar and merchants for investigation. *Ibid.* 740.

(By the general law prior to such statute.\*)

41. The master cannot sue in the Admiralty Court for his wages, his contract being with the owners, and founded on their credit, and not on that of the ship. Prohibitions granted in such cases. *Woodward v. Bontham* (1659), 1 Ld. Raym. 3.; *Clay v. Snelgrave* (1699), 12 Mod. 405., Com. 74., 1 Ld. Raym. 576., 1 Salk. 33., Carth. 518.; *Neclanham v. Foljamb and Another* (1713), 6 Vin. Abr. 439.; *Ragg v. King* (1729), 2 Stra. 858., Barnard. 297.; and *King v. Player*, there cited, 2 Sho. 86., Sir L. Jenkins, 81., Abb. Sh. 655.; *The Lord Hobart, Gamage*, 2 Dodson, 104.

42. Prohibition lies to the Admiralty on a suit there by the master against part-owners for the seamen's wages which he had paid. *Anon.* Fort. 230.; *Woodward v. Bontham*, 1 Ld. Raym. 3.

43. If the master suing in the Admiralty lay a contract *infra fluxum et refluxum maris, infra jurisdictionem Curie Admiralitatis*, it is well. *Barber v. Wharton* (1727), Ld. Raym. 1452., 1 Com. Dig. 274.

44. And if he obtain a sentence there, the Courts of Westminster Hall will not prohibit the execution of the sentence. *Ibid.*

45. In respect to the distinction between an original suit and a permission to be paid out of the proceeds, there has been no instance where a master has been permitted to sue against proceeds in the registry, except in cases of mere remnants and surplus; and not even then, if there have been adverse interests opposing it. *The Favourite, Nicholas de Jersey*, 2 C. Rob. 232.

(c) *Masters theretofore mates.* †

46. If the mate become master during the voyage, he may sue in the Admiralty for the wages due to him in the former capacity, but not in the latter. *Bead v. Chapman*, 2 Stra. 937.

47. When a mate has cast upon him the office of master during the voyage, by the death or other removal of the master, he cannot sue in the Admiralty for the *quan-*

*tum meruit* due to him as master for his services in that capacity, because the contract of master is not made on the bottom of the ship; but he may sue in the Admiralty for his original wages as mate during the whole time that he served as master, for the office of mate is not merged in that of master. *The Favourite, Nicholas de Jersey*, 2 C. Rob. 232.

48. The Court of Admiralty, but for some prohibitions by the Common Law Courts, would have been inclined to sustain a suit on behalf of a mate thus situated for his whole wages, on the ground that his original contract was not only to perform the duties of mate, but also, by necessary implication of law, to take upon him, in case of necessity, the duties of master; and it might therefore have been considered as a thing mutually understood in the original contract, and foreseen and provided for at the time and in the act of forming it. *Ibid.*

49. A mate who, at the request of the owner, acted as master from Gravesend to London, held not to be debarred suing for wages earned on the voyage as mate. *The Batavia*, heretofore *The Unity*, 2 Dodson, 503.

50. In a suit (undefended) brought by a master for wages due to him when mate, wages pronounced for. *The Adventure, Young*, 3 Hagg. 153.

(d) *Mates.*

51. The mate of a ship may sue the master in the Admiralty Court for his wages. Prohibition in such a case refused. *Bayly v. Grant* (1699), 1 Salk. 33., 12 Mod. 444., 1 Ld. Raym. 632., Holt, 48.; *S. P. Hook v. Moreton* (1697), 1 Ld. Raym. 397.

(e) *Surgeons.*

52. The surgeon of a ship is to be deemed a mariner to the extent of entitling him to arrest the ship for wages in the Court of Admiralty. *Maddox v. —* (1700), 12 Mod. 526.; *Ross v. Walker* (1765), 2 Wils. 264.; *The Prince George, Shaw*, 3 Hagg. 379.; *Mills v. Long*, 1 Sayer's Rep. 136.

\* 9. Where a person was hired to go on a voyage as nominal master, but was never master in fact, Held, that his contract for wages with the real master was cognisable in the Admiralty, and binding on the vessel and owners. *L'Arina v. The Exchange, Bee's (AMERICAN) Rep.* 198.

† 10. Upon the death of the master the mate succeeds to his place *virtute officii*, by operation of law.

He acts in the stead of the master in all cases where the latter is dead or absent. He does not cease to be mate in such cases; but he has thrown upon him cumulatively the duties of master. He is still a mate acting as master, and may sue for his wages as mate in the Admiralty. *The George*, 1 Sumner's (AMERICAN) Rep. 151.

53. *Seemle* that a surgeon would be permitted to sue in the Admiralty Court for his wages, but not for medicines furnished for the use of the ship's crew. *The Lord Hobart, Gamage*, 2 Dodson, 105.

54. A claim for wages preferred by the surgeon of a ship pronounced for. *The Wharton, Whisham*, 3 Hagg. 148. n.

(f) *Pilots.*

55. A pilot may sue in the Admiralty Court for his wages, unless the contract be made and the work done *infra corpus comitatus*. *Ross v. Walker* (1765), 2 Wils. 264.

*See post*, No. 113.

(g) *Other parties.\**

56. Every person employed on board a ship, except the master, is entitled to the privilege of arresting the ship in the Court of Admiralty for his wages. *The Prince George, Shaw*, 3 Hagg. 379.

57. A purser may sue in the Admiralty for his wages. Prohibition refused in such a case. *Alleson v. March* (1689), 2 Vent. 181.

58. In a suit for 200*l.* wages, brought by a purser, an agreement having been entered into between him and the master, the sole owner, on land, prior to the ship's sailing, for him to serve in that capacity on the outward voyage for 200*l.* and expenses, and he having, also prior to the ship's sailing, signed the usual articles, but in which there was no rate of wages specified, a summary petition of the purser, opposed by a mortgagee, admitted. After the completion of the outward voyage, he had ceased, by the master's orders, to do duty as purser, but had not been regularly suspended for neglect of duty. A defensive allegation of the mortgagee, pleading that the agreement was made on land, inaccuracy in the purser's accounts, that the usual wages were 2*l.* a month, and that the ship had been

sold, and the proceeds were not sufficient to pay the mortgagees, rejected, and wages pronounced for, with costs. *The Prince George, Shaw*, 3 Hagg. 376.

59. A ship's carpenter has been permitted to sue in the Admiralty Court for his wages. *Wheeler v. Thompson* (1738), Str. 707.; *S. P. Creed v. Mallett* (1741), Fort. 281.; *The Lord Hobart, Gamage*, 2 Dodson, 104.

60. A boatswain may sue in the Court of Admiralty for his wages. *Alleson v. March* (1689), 2 Vent. 181.; *Ragg v. King* (1729), 2 Str. 858.

61. A claim for wages brought by a female as cook and steward of a ship pronounced for, with costs, she having proved the proper performance of her duties in those capacities, and as a mariner. *The Jane and Matilda, Chandler*, 1 Hagg. 187.

IV. OF THE JURISDICTION OF MAGISTRATES  
AS TO—†

62. By 7 & 8 *Vict. c. 112. s. 15.* in all cases of wages not exceeding 20*l.* due to any seaman, it shall be lawful for any neighbouring justice of the peace, on complaint on oath, to summon the party on whom the claim is made to appear before him and answer such complaint; and on his appearance, or in default thereof, on proof of his having been so summoned, such justice is thereby empowered to examine the parties and their witnesses on oath touching such complaint, and to make an order for payment of the wages, not exceeding 20*l.*, with costs; and in case such order is not obeyed within two days afterwards, to levy the amount by his warrant and distress and sale of the goods of the party, or on the ship, her tackle and apparel; or if such levy cannot be made on either ship or goods, then to apprehend and imprison the party until payment, and the award and decision of such justice shall be final and conclusive.

63. By *s. 14.* if, three days after the

\* 11. In order to entitle persons to sue in the Admiralty for wages, the services rendered must be necessary, or at least contributory to the preservation of the vessel, or of those who are employed in navigating her. *Trainer et al. v. The Superior*, Gilpin's (AMERICAN) Rep. 514.

12. Musicians, hired on board a vessel as such, refused the jurisdiction of the Court of Admiralty. *Ibid.*

13. The pilot, deck-hands, engineer, and firemen on board of a steam-boat, are mariners to the extent of being entitled to sue for their wages in the Admiralty. *Wilson v. The steam-boat Ohio*, *ibid.* 505.

† 14. Where a vessel was under arrest in the Court of Admiralty in a cause of bottomry, and a distress was levied by magistrates at the suit of the seamen for wages under 7 & 8 *Vict. c. 112. s. 15.*, by authority of which, notwithstanding notice from the officer in possession, the tackle, apparel, and furniture were sold, the Court granted a monition against the auctioneer to show cause why an attachment should not issue against him for removing the same, who thereupon restored them. *The Westmoreland*, 4 Notes of Cases, 173.

termination of the stipulated service, or the seamen's discharge, he shall for sufficient reason, require immediate payment of his wages, not exceeding 20*l.*, it shall be lawful for any neighbouring justice of the peace, on his application and proof of such reasonable cause, to order payment of such wages forthwith; and in default of compliance, the party shall forfeit to the seaman 5*l.* in addition to his wages.

*See post*, No. 309.

#### V. OF FOREIGN SEAMEN.

##### 1. General considerations as to —

64. Whoever engages to serve on board a foreign ship necessarily undertakes to be bound by the law of the country to which the ship belongs, and the legality of his claim must be tried by that law. *The Johann, Friederich*, 1 W. Rob. 37, 38.\*

##### 2. Of the jurisdiction of British Courts as to —†

65. If foreign sailors stipulate in their own country, before the commencement of a voyage, that they will not sue the captain for any money abroad, but be satisfied with what he may advance them in deduction of their wages till they return home, they cannot maintain an action against him for wages in the Courts of this country. *Johnson v. Machielsne*, 3 Camp. 44. (Ellenborough.)

66. Even though the ship and cargo be confiscated in an English port, and the voyage thereby ended. *Geinar v. Meyer*, 2 H. Black. 603.

67. A libel was filed in the High Court of Admiralty by American seamen, discharged in England, for their wages, and for the three months' pay directed to be paid to their consul by the Act of the United States, 28 February, 1803. The libel pleaded the act printed on the back of the contract, but not referred to therein. The Court, after remarking on the jurisdiction in favour of British seamen, stated that

there were cases in which, to prevent a total failure of justice, the Court had gone a step farther, and as wages are due by the general Maritime Law, however modified by the particular regulations of different countries, had, with the consent of the accredited agent of their own government, entertained proceedings for wages at the suit of foreign seamen against their vessels lying in England. *The Courtney, English*, Edwards, 239.

68. But as the latter part of the claim in this case did not arise out of the general Maritime Law, but called for an enforcement of a municipal regulation of the United States, the Court declined to entertain the suit farther than for the wages. *Ibid.*

69. It intimated, however, that if the statute regulation had been embodied in the contract, so as to compose a part of it, the whole might have been carried into effect as an article of contract between the parties. *Ibid.*

70. The Court of Admiralty is extremely unwilling to interfere in suits for wages by a foreign mariner against a foreign ship, without the consent of the representative of the nation to which the parties belong, but will do so on fit occasion. *The Vrow Mina, Behrends*, 1 Dodson, 234.

71. The Court of Admiralty will entertain a suit for wages against a foreign ship belonging to an alien enemy, and coming to the ports of this country under a British licence, without the consent of the representative of the nation to which the parties belong. In such a suit, brought by a foreign mate, protest of the owners overruled, and a sale of the ship for payment of wages and subsistence money decreed. *Ibid.*

72. The Court of Admiralty has jurisdiction in suits for wages promoted by foreign seamen against foreign vessels, as questions of general Maritime Law. The exercise of such jurisdiction is, however, discretionary in the Court, and to be permitted or withheld according to the cir-

\* 15. British seamen applied to the District Court of the United States for a discharge and wages, though the voyage was not ended. Without meaning to say that the Court had not jurisdiction, the parties were remitted to their domestic forum. *Thompson et al. v. The Nancy*, Bee's (AMERICAN) Rep. 217.

16. Seamen on board ships having letters of marque may sue for their wages in a neutral port. *Ellison v. The ship Bellona*, *Ibid.* 116.

17. The Court will not interfere in disputes

between the master and seamen of a foreign vessel, when they are bound by the articles to submit all disputes to a home tribunal. *Aertson v. The ship Aurora*, *Ibid.* 161.

† 18. Foreign seamen may institute a suit in the Admiralty for their wages, but not if earned under a special contract referring to their own foreign law, especially if that law or their own stipulation preclude them from suing their captain for wages elsewhere than in their own country. 2 *Chitty's Gen. Prac.* 522.

cumstances of the case. The consent of the foreign minister or consul is not essential to found such jurisdiction. It is necessary, however, that notice of intended proceedings should be given in the first instance to the representative of the government to which the vessel proceeded against belongs. In a suit for wages brought by foreign seamen, an appearance for the master, a foreigner, under protest to the jurisdiction of the Court, overruled, but without costs, as being a case *prima impressionis*. *The Golubchick, Bernardos*, 1 W. Rob. 143. 148. 153, 154.

### 3. *Miscellanea*.\*

73. The 2 *Geo. 2. c. 36.*† held to be confined to voyages on board British ships, and not to apply to the case of a British seaman acting on board a foreign ship in a foreign port. *Dickman v. Benson*, 3 Camp. 290., 1 Holt, 464.

74. The Crown, on being memorialised by certain Greek mariners of a foreign ship sold under the authority of the Court of Admiralty, directed the King's proctor to take proceedings to recover their wages, and provided them with the means of subsistence and to return to their own country. *The Madonna d'Idra, Paphagia*, 1 Dodson, 37.

75. Greek mariners of a Greek vessel sold by the authority of the Court, held to be entitled, according to the law of their country, to subsistence until they could be returned to their country. Such subsistence considered in the same light as wages, and pronounced for out of the proceeds of sale of the ship, and as taking precedence of bottomry bonds. *Ibid.* 40.

76. A claim for wages at the instance of foreign mariners against a foreign ship pronounced for, with costs, on the ground that the vessel had become a British ship, having been assigned over by her foreign owners to British creditors, and that an agreement between the owners and the

seamen not to bring any suit for wages was disclaimed by the assignment. *The Wilhelm Frederick, Noorman*, 1 Hagg. 138.

*See post*, No. 128.

## VI. OF THE RIGHT TO—†

### 1. *Generally*.

77. In a suit for wages, an informality in the mode of hiring will not disqualify from remuneration if the work has been properly done. *The Jane and Matilda, Chandler*, 1 Hagg. 193.

78. A ship's carpenter performing certain services on land, with the permission of the master, for which he received remuneration, held to be, notwithstanding, entitled to his wages also during such time, though not employed in the service of the ship. *The Bulmer, Brown*, *Ibid.* 167.

79. Claim for wages by a person acting in the capacity of second mate, and so entered in the articles, but without any rate of wages attached, pronounced against, on the ground that the man was proved to have been taken out of friendship for his father, as on a trial voyage, and with certain indulgences and advantages, amounting to a valuable consideration, in lieu of wages. *The Harvey, Peach*, 2 Hagg. 79.

80. *Semble* that the representative of a seaman hired by the month is entitled to a proportion of wages to the time of his death, if he can prove a usage to pay a proportionate sum in such cases. *Cutler v. Powell* (1795), 6 T. R. 320.

*See* MARINERS' CONTRACTS, *cap. IV. sect. 2.*

### 2. *Gradation of wages*.

81. A claim for a gradation of wages, first as mariner, afterwards as second mate, and then as chief mate, preferred by a person originally taken on board as supernumerary, and without any fixed rate of wages, pronounced for, with costs. The Court leant to the mariner, in consequence

\* 19. An application was made to the Court of Admiralty on behalf of the mate and crew of a foreign ship deserted by the master and sold under a decree of the Court in a cause of bottomry, for an order for the payment of their wages, and their board as part of their wages, the men being left entirely destitute. The Commissioner who sold the vessel had been obliged by the consul to deposit three months' wages in his hands. The Court directed the amount, verified by affidavit, to be paid. *The Tremont* (1841), 10 Monthly Law Mag. (Notes of Cases), 137.

† One of the early statutes with reference to Merchant Seamen, now repealed.

‡ 20. The policy of all maritime states, in order to stimulate the zeal and attention of seamen, has made the payment of their wages to depend generally on the successful termination of the voyage. If, in the course of the voyage, a total loss or capture of the ship take place, the seamen lose their wages, and also if the ship become disabled on the voyage; but the wages are not lost by the hypothecation of the ship, nor even by the sale of it, unless the sale be made under the authority of a competent Court. *Abb. Sh.* 698.

or unsubstantiated charges of theft brought against him. *The Porcupine, Laing*, 1 Hagg. 381.

82. The Court would not support, as against a second mate appointed chief mate, and suing for wages as such chief officer, on a *quantum meruit*, an agreement with him on such appointment, that his amount of pay was to depend on the discretion of the owner on the return of the ship to Great Britain. *The Providence, Herd*, Ibid. 391.

83. Claim of a second mate, who succeeded to the office of chief mate, to the rate of wages given to chief mates on similar voyages, pronounced for, with costs. An alteration in the ship's articles held not necessary to support his title. Wages as chief mate, at a *quantum meruit*, estimated according to the common usage of such voyages, decreed. Ibid. 391. 393.

84. A seaman who entered as second mate, but afterwards, and without any new agreement, did the duty and acted as first mate (the first mate having deserted), held entitled during such period to wages after the same rate as those paid to the former chief mate. Wages after that rate pronounced for, with full costs. *The Gondolier, Rhodes*, 3 Hagg. 190.

### 3. Under agreements for extra services and remuneration.

85. By 2 Geo. 2. c. 36., made perpetual by 2 Geo. 3. c. 31., shipping articles were required to be signed, and were made conclusive, "any custom or usage to the contrary notwithstanding; and by the 39 Geo. 3. c. 80. s. 27. in voyages in the slave trade the articles were required, under a penalty, to be signed in presence of, and witnessed by, the clearing officer, and one of the tidesmen of the port," &c.; and they are declared conclusive between the parties. Evidence was offered on the part of a mate to show that, besides the stipulated wages, it was the custom in this trade to allow the mate a privilege of carrying one slave; and he libelled for the value of that privilege, according to average price at the port of delivery: Held that the claim and evidence were wholly inadmissible. *The Isabella, Brand*, 2 C. Rob. 241.; *White v. Wilson*, 2 B. & P. 116.

86. In a suit for wages, a charge of crimpage referred to the registrar and merchants, to report whether there was any custom in the merchant service under

which such a charge was usually paid as a part of wages. *The Jack Park, Little*, 4 C. Rob. 314.

87. A seaman, who had engaged to serve on board a ship, was promised by the master, when the ship was in distress, an extra sum, in consideration of extraordinary exertion on his part. Such a contract held to be wholly void. *Harris v. Watson* (1797, Kenyon), Peake, N. P. C. 72.

88. In the course of a voyage some of the seamen deserted, and the captain, not being able to find others to supply their places, promised to divide the wages which would have become due to them among the remainder of the crew. Such a promise held void for want of consideration. *Still v. Myrick*, 2 Camp. 317. (Ellenborough); *Thompson v. Havelock*, 1 Camp. 527.

89. A man, rated on board an East India ship as a seaman, and who signed the ship's articles, and received pay as such, held to be within the stat. 2 Geo. 2. c. 36., and not entitled to maintain any action upon a parol agreement subsequently made for wages as cuddy servant during the voyage. *Dofter v. Cresswell*, 7 D. & R. 650., 2 Car. & P. 161.

90. A mariner, who has signed articles for a voyage at a certain pay per month, cannot claim any further wages or gratuity by usage or custom. *Elsworth v. Woolmore*, 5 Esp. 84. (Alvanley.)

91. The 37 Geo. 3. c. 73. s. 3. having prohibited more than double monthly wages being given to seamen coming from the West Indies, unless the captain be specially licensed to give a greater rate by the chief officer of the port, a general licence by the chief officer to a captain "to procure men on such terms as he could," held void. *Rogers v. Lacy*, 2 B. & P. 57., 3 Esp. 43.

92. A promise by a captain on behalf of his owners, to pay monthly wages to one of the sailors, in order to induce him to become a hostage, is binding on the owners, although they abandon the ship and cargo. *Yeates v. Hall*, 1 T. R. 73.; and see *Helly v. Grant*, 1 T. R. 76.

93. The plaintiff, at the request of the defendant, a captain in the Royal Navy, agreed to enter on board his ship as captain's cook, the defendant undertaking to pay him wages over and above the government pay to which the rating would entitle him. The plaintiff having performed the service, held that there was a sufficient consideration to enable him to bring an

action for such wages. *Clutterbuck v. Coffin*, 4 Scott, N. R. 509.\*

#### 4. During illness.†

94. A seaman is entitled to his whole wages, though he has been unable to render his services, if his inability has proceeded either from a hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage. *Paul v. Eden*, Abb. Sh. 450., 6 T. R. 325. n.

95. The seaman will have a right to his full wages, although prevented from performing his services by a hurt received in the discharge of his duty, or by sickness. *Chandler v. Grieves*, 2 H. Black. 606. n. (a), 6 T. R. 325. n., Abb. Sh. 442., Smith's Merc. Law, 397.

96. By 7 & 8 Vict. c. 112. s. 18. a supply of medicines, &c. is to be kept on board every British ship navigating to and from Great Britain; and in case the master or any seaman shall receive any hurt in the service of the ship, the expenses of medical advice, attendance, medicines, and subsistence for him until cured or brought to this country, shall, together with the costs of his conveyance thither, be defrayed by the owner, without any deduction whatever from his wages on that account; and if paid by any officer on behalf of her Majesty, the amount and costs shall be recoverable as a debt due to her Majesty.

#### 5. In cases of impressment.

97. Where a seaman is impressed into the King's service out of a vessel on a

voyage, he cannot recover wages for the whole voyage, unless it appears to have been done by the malicious acts of the master or of those under his authority. *The Jack Park*, Little, 4 C. Rob. 308.

98. A seaman belonging to a privateer, who was to receive a certain share of prizes in lieu of wages, and had engaged to serve six months on pain of forfeiture of such share, *Held* not to lose his share of a prize taken whilst he was in the privateer in consequence of his being afterwards impressed, and then accepting the bounty and entering on board a King's ship before the six months expired. *Paul v. Eden*, Abb. Sh. 450. 620.; *S. P. Chandler v. Grieves*, 2 H. Black. 606. n., 6 T. R. 325. n.

99. When a seaman has been impressed, and so would be entitled to wages for the time he had served, under stat. 2 Geo. 2. c. 36. s. 13., his claim must nevertheless depend on the completion of the voyage; for if the vessel be lost, as the rest of the crew thereby forfeit their claim to wages, the impressed seaman equally forfeits his claim for wages up to the time of his being impressed. *Dunkley v. Bulwer*, 6 Esp. 86. (Ellenborough); *S. C. nom. Anon.* 2 Camp. 320. n. (but see 7 & 8 Vict. c. 112., *infra*.)

100. By 7 & 8 Vict. c. 112. s. 51., upon entry of seamen into the Navy from any ships, they shall be entitled to the immediate delivery up of their clothes, &c., and payment of any wages that may be due.

#### 6. In cases of capture and recapture.‡

101. If a ship be lost or captured before

\* 21. This case differs from those cases (see *Harris v. Watson*, *Still v. Myrick*, and *Thompson v. Havelock*) in which contracts for extra remuneration were made by persons not at the time competent to contract, having already bound themselves to give their entire services under a prior existing contract, as in this case the agreement for service was entered into while the plaintiff was in another employment and perfectly free to contract in the manner he did. There being no plea but non assumpsit, the objection to the contract on the ground of illegality was not open to the defendant. Abb. Sh. 618.

† 22. Mariners wounded in the ship's service are to be healed at the ship's charge, but not those getting drunk and wounded on shore, and not in the ship's service. Sick mariners are to be provided for at the expense of the ship, and their wages during illness to be paid to them, or on their death to their representatives. *Laws of Oleron*, cited in *Godolphin's Adm. Jur.*, ext. 6, 7.

23. The mate, in sickness, is entitled to be cured at the expense of the ship, in the same manner as seamen, and therefore, if he be put on shore from sickness, for the convenience of the ship, his expenses for medicines, advice, attendance, and board, are to be borne by the shipowner. *The George*, 1 Sumner's (AMERICAN) Rep. 151.

‡ 24. In an action for the wages of a seaman after a capture and ransom of the ship, *Held*, that the seaman was entitled to nothing, he being unable to prove that by the custom of merchants he was entitled *pro ratâ*, as was insisted on his behalf. (See *Chandler v. Meade*, mentioned at the end of the case of *Wiggins v. Ingleton*, 2 Ld. Raym. 1211.) But it seems to be the better opinion that in the case of capture and recapture, if the ship perform her voyage and earn her freight, a mariner who has not been separated from her is entitled to his wages on the footing of the original contract, subject perhaps to a proportionate salvage. Abb. Sh. 640.



the end of the voyage the wages are lost. *Yentes v. Hall* (1785), 1 T. R. 79.; *Herniman v. Bowden* (1798), 3 Burr. 1844.

102. An officer or a sailor who has engaged to serve on board a privateer having letters of marque for certain wages during the voyage and a share of all prizes, is not entitled to any part of the wages if the ship be taken before she completes her voyage, although he shall have been sent from the ship before the capture as prize-master on board a prize taken in the course of the voyage. *Abernethy v. Laudale*, 2 Dougl. 539.

103. If the ship be captured in the course of her voyage and be afterwards recaptured and arrive at her port of destination, the sailors are entitled to their wages. *Bergstrom v. Mills*, 3 Esp. 36. (Eldon.)

104. Where a seaman had been on the capture of the vessel taken out by the enemy and carried to France, and was not on board at the time of a subsequent recapture, *Held* that the recapture did not revive his right to wages. *The Friends, Bell*, 4 C. Rob. 143.

#### 7. In cases of detention by foreign powers.\*

105. The Russian Government laid an embargo on British ships in Russian ports, until an alleged convention between the Russian and British Government should be fulfilled by the latter. The crews were taken out of the ships, marched up the country, and there detained for six months,

and treated as prisoners of war, and at the end of that time they were marched back to their ships, and the vessels with their cargoes restored. *Held* that this was an embargo, and not a hostile capture, and that the seamen were entitled to wages during the time of the detention. *Thompson v. Beale* (1805), 1 Dow. 299., 4 East, 546., 1 Smith, 144., reversing the judgment in 8 B & P. 405., Abb. Sh. 642.

106. It was so *held* where the plaintiff was a foreign seaman. *Johnson v. Broderick*, 4 East, 566., 1 Smith, 153., Abb. Sh. 643.

107. In an action of assumpsit brought by the master of a vessel against his owners to recover wages which accrued during his detention in a foreign port, it is not incumbent on him to prove that freight was earned: it is sufficient for him to show that he performed his services, and the defendants must adduce evidence to prove that he is not entitled to remuneration. *Brown v. Millner*, 1 Moore, 65., 7 Taunt. 319., Abb. Sh. 663.

108. A mariner *held* entitled to recover (on a count for work and labour) wages during a hostile embargo in a foreign port while he was imprisoned on shore, without producing the order by which the embargo was taken off, on proof that the crew were restored to the ship, and that she completed her voyage and earned freight. *Delamainer v. Winteringham*, 4 Camp. 186. (Ellenborough); *S. P. Pratt v. Cuff*, 4 East, 43. n.

25. The capture of a neutral ship does not of itself operate as a dissolution of the contract for mariners' wages, but at most only as a suspension of it. *Brown v. Lull*, 2 Sumner's (AMERICAN) Rep. 443.

26. Capture does not dissolve the contract for wages; at most it is but suspended during the prize proceedings, the event of which the parties have a right to await; and by the subsequent restoration of the vessel, the contract revives in its full force, and the parties are remitted to their former character and rights. *The Saratoga*, 2 Gallison's (AMERICAN) Rep. 178.

27. If the ship be condemned by a sentence of condemnation, then the contract is dissolved and the seamen are discharged from any further duty on board; and they lose their wages, unless there is a subsequent restitution of the property or of its equivalent value, upon an appeal, or by treaty, with an allowance of freight, in which event their claim for wages revives. *Brown v. Lull*, 2 Sumner's (AMERICAN) Rep. 443.

28. If the ship be restored and perform her

voyage, the contract is revived, and the mariner becomes entitled to his wages; that is, to his full wages for the whole voyage, if he has remained on board and done his duty, or if, being taken out, he has been unable, without any fault of his own, to rejoin the ship. *Ibid.*

\* 29. The master of a vessel which had been seized and restored claimed his wages for the period of detention, although during that time he had been separated from her, she having afterwards earned her freight. The wages for the voyage, exclusive of that period, were paid without dispute, and the defendant is reported to have acquiesced in a verdict given against him for the further sum, by reason of a strong opinion expressed by his Lordship at the trial in favour of the claim. *Pratt v. Cuff*, cited in *Thompson v. Rowcroft*, 4 East, 43., Abb. Sh. 641.

30. Wages are due to a seaman during the period of the vessel's detention by an embargo in a foreign port, freight having been earned. *Thomson v. Millis* (1806), 13 F. C. 560., Mor. No. 4. App. Mutual Contract (SCOTCH Rep.)

8. *Where the voyage is not proceeded with.\**

109. If after the hiring of seamen the owners of a ship do not think proper to send her on the intended voyage, the seamen are to be paid for the time during which they have been employed on board the ship. *Wells v. Osman*, 2 Ld. Raym. 1044., 6 Mod. 238.

110. If the ship be not seaworthy at the outset and the voyage be discontinued on that account, a seaman is not entitled to wages; but *seem* that he might maintain a special action against the owner for the recovery of damages. *Eaken v. Thom*, 5 Esp. N.P.C. 6., Abb. Sh. 639.

111. A mariner, discharged from a vessel after articles had been signed, but before the commencement of the voyage for which he was engaged and which was afterwards prosecuted, *Held* entitled to proceed in the Court of Admiralty for wages agreed in such articles, less the amount of wages earned by him in other vessels during the period of such voyage; and his summary petition admitted accordingly. *Seem* that if the intended voyage had been altogether abandoned by the owner, the seaman must have sought his remedy at Common Law by an action on the case. *The City of London, Reynolds*, 1 W. Rob. 88.

*See post*, No. 144.

9. *Where earned on illegal voyages.†*

112. Claim of a mate of a slave ship for wages, &c., under a contract repugnant to the provisions of the stat. 30 Geo. 3. c. 33. (for the regulation of the slave trade), pronounced against as a *turpis contractus*, which the Court would not lend its assistance to carry into effect. Under the circumstances, the owners being also to blame, no costs given. *The Vanguard, Price*, 6 C. Rob. 207.

113. A suit for wages on the part of a British pilot, for navigating a foreign ship to an enemy's port, dismissed, but, under the circumstances, without costs. *The Benjamin Franklin, Wicks*, Ibid. 350.

114. Wages cannot be earned, so as to give a lien on the vessel, on an illegal voyage or on an unauthorized expedition of a naval or military character. In a suit for wages a defensive allegation of the owners pleading the voyage to have been of that character admitted to proof. *The Leander, Murray, formerly Lewis*, Edwards, 85.

115. The condemnation of a vessel for illegal trading, and before freight is earned, does not work a forfeiture of wages to the mariners, unless implicated in the illegal act, nor is such condemnation a bar to an action by the mariners against the owners for such wages. *The Malta, Young*, 2 Hagg. 163.

10. *Where the ship is disposed of abroad.*

116. In a suit by a mariner discharged in a foreign port (the ship being obliged to be laid up for repair there), but sent home to England and his travelling expenses paid, for payment of his wages down to the time of the return of the ship to this country according to his contract, the master *held* to be authorized, under the circumstances, to give such a discharge, but the mariner to be entitled to wages up to the time of his return to this country. Wages pronounced for accordingly, with costs of the mariner. *The Elizabeth, Gull*, 2 Dodson, 412.

117. By 7 & 8 Vict. c. 112. s. 17. in all cases in which any ship shall be disposed of abroad (unless the crew consent in writing before the British Consul to complete the voyage if continued), or when the service of any seaman shall terminate abroad, the master shall give each of the crew a certificate of discharge in the form set forth in Schedule E. to the act, as also his register ticket, and, besides paying his wages, provide him with employment or a passage home, or defray the expenses thereof, and if he shall neglect or refuse so to do, such expenses, when defrayed by the Consul or other person on behalf of the seaman, shall be, except in cases of barratry, recoverable against the owner

\* 31. If the voyage be interrupted without the fault of the crew, they shall receive wages during the time they work on board the vessel in port. *Bray et al. v. The ship Atalanta*, Bee's (AMERICAN) Rep. 48.

† 32. Wages are not due if the further prosecution of the voyage becomes illegal by a war, for the original contract is thereby dissolved. But if the mariners, after such legal effect of the loss of the voyage, with the consent of the master, remain on

board and do duty for the preservation or equipment of the ship, they are entitled to a reasonable compensation in the nature of wages, *pro opere et labore*. *The Saratoga*, 2 Gallison's (AMERICAN) Rep. 178.

33. The claim of seamen for wages, and of material men for supplies, where the parties were innocent of all knowledge of, or participation in, the illegal voyage, will be preferred to the claim of forfeiture on the part of government. *The St. Jago de Cuba*, 9 Wheaton's (AMERICAN) Rep. 409.

with costs, and if defrayed by the seaman shall be recoverable as wages due to him.

### 11. *Where wrongfully discharged.\**

118. If a master turn a mariner on shore without cause in a foreign country, the mere refusal to go would not of itself justify an improper discharge. *Robinett v. The Exeter*, 2 C. Rob. 261.

119. The propriety of the refusal in such a case must depend entirely on the propriety of the order, and that must depend almost entirely upon its necessity, for little less than absolute necessity is required to bear out such an order. *Ibid.*

120. By the stat. 39 Geo. 3. c. 80. (for the regulation of the African trade) mariners are not to be discharged abroad in that service. Claim of a mariner for wages to the time of the ship's return, he having been discharged in Africa, opposed by the owners on the suggestion that he had deserted, pronounced for. *The Beaver, Grierson*, 3 C. Rob. 92.

121. A master possesses an authority under certain circumstances, and acting from a "*cause valable*," to discharge his crew in a foreign port upon proper conditions, viz. procuring them a free passage home, and payment up to the time of their return. He has no such authority, "*sans cause valable*," or upon idle or false pretences, and in such cases is answerable for the whole wages of the voyage. *The Elizabeth, Gull*, 2 Dodson, 407. 409. 411, 412.

122. A wrongful discharge enures to a reimbursement of necessary expenses consequent thereon. *The Frederick, Hearn*, 1 Hagg. 218.

123. The acceptance by mariners of a discharge proposed by the master when in a foreign port, with the alternative of being left destitute, is a preference of evils, not a voluntary act. Such an acceptance does not bar their claim for wages. *The Elizabeth, Gull*, 2 Dodson, 406.

124. The Maritime Law of every country is averse from the discharge of native sea-

men in foreign ports, but if it be entirely with their own consent they have no right to complain. *Ibid.* 405.

125. By 7 & 8 Vict. c. 112. s. 46. no seaman is to be discharged abroad nor to be abandoned or left behind without the sanction of the Consul of the place.

126. By s. 48. if any of the crew are so left behind, the proof of sanction or authority is to be upon the master.

127. By s. 52. powers are given for her Majesty to sue for the amount advanced for the relief of seamen left abroad.

128. By s. 64. provision is made to enable the Commissioners of the Admiralty to provide for the relief of persons brought from Asia or Africa and left in this country in distress, and to recover the expenses thereof with costs against the master or owner of the ship in which they were so brought here.

### 12. *Where the ship is lost.*

129. By 7 & 8 Vict. c. 112. s. 17. in all cases of wreck or loss of the ship, every surviving seaman shall be entitled to his wages up to the period of such loss, whether the ship shall or shall not have previously earned freight, provided the seaman shall produce a certificate from the master or chief surviving officer of the ship to the effect that he had exerted himself to the utmost to save the ship, cargo, and stores.

130. Prior to the above statute, by the general and just policy of all maritime states, the total loss of the ship, occasioned solely by the act of God visiting the deep with storms and tempests, brought with it the loss of all the earned wages, except advances, although the general rule is that the act of God prejudices no man, and although the mariner had contributed nothing to the mischance, but exerted his utmost endeavours to prevent it. *The Neptune, Clark*, 1 Hagg. 239.; *Appleby v. Dodds*, 8 East, 300.; *Dunkley v. Bulwer*, 6 Esp. 86., 2 Camp. 320. n., and see 1 Sid. 179.

\* 34. If a seaman be discharged abroad without justifiable cause, and without his own consent, the measure of damages is the full amount of wages till the return of the vessel, and the expenses of his return. *Hutchinson v. Coombs*, 7 (AMERICAN) Jur. 37. And the intermediate earnings of the seaman may be deducted from the expenses of his return, but not from the wages due. *Ibid.*

35. Though the master have sufficient cause

for discharging a seaman, if he repent and offer amends and to return to his duty, the master is bound to receive him. *Ibid.*

36. In the absence of the master, the mate is entrusted with the care of the ship, and the government and management of the crew; and if a seaman be wrongfully dismissed by him, the owners are liable therefor, as the act of their agent. *Orne v. Townsend*, 4 Mason's (AMERICAN) Rep. 541.

13. *Where the ship is lost, but portions thereof are recovered.\**

131. The modern practice of great maritime states is repugnant to a forfeiture of wages in cases of wreck where parts of the vessel are preserved. *The Neptune, Clark*, 1 Hagg. 233.

132. Where part of a vessel had been saved by the exertions of the mariners, *Held* that they were entitled to the payment of their wages as far as the fragments of the materials would form a fund, though there was no freight earned by the owners. Wages pronounced for. *Ibid.* 227.

133. Mariners are not entitled to the payment of their wages upon parts of a wreck saved on any principle of salvage, but of their lien for wages on the whole as including any part of the ship. *The Reliance, Green*, 2 W. Rob. 122.

134. Where portions of a wrecked vessel were recovered, the administratrix of a deceased mariner *Held* entitled to sue against the proceeds for wages due to him, although no freight had been earned, and the parts recovered were saved by the exertions of third parties and not of the crew, all of whom, except one man, were drowned. Summary petition admitted accordingly. *Ibid.* 119., 7 Jur. 542., Abb. Sh. 634.

14. *As dependent on the earning of freight.†*

135. Freight is the mother of wages, and wherever freight is due wages are. If a ship be lost before it comes to a delivering port, neither freight nor wages are due; if lost afterwards, freight is due to the last delivering port. If advance money be paid

beforehand on account of freight, and so named in the charterparty, though the ship be lost before it come to a delivering port, yet wages are due according to the proportion of the freight paid beforehand, for the freighters cannot have their money returned. *Anon.* 2 Show. 283., Abb. Sh. 625.; *Saunders v. Drew*, 3 B. & A. 445.

136. In an action for seamen's wages, it is not incumbent on the plaintiff to prove that the ship earned freight. *Brown v. Milner*, 7 Taunt. 319.

137. Freight is the mother and the only parent of wages. The title to wages depends on freight alone, and accrues upon the receipt of freight, not by any special terms of contract, but by the general policy of the law. *The Juliana, Ogilvie*, 2 Dodson, 510. 516.

138. The maxim that freight is the mother of wages is not formed with strict accuracy. The natural and legal parents of wages are the mariners' contract and the performance of the service covenanted therein, which generate the title to wages. The rule making the payment of wages dependent on the earning of freight was framed to stimulate the zeal and attention of mariners. *The Neptune, Clark*, 1 Hagg. 232.

139. It by no means follows universally that where no freight is due no wages are due also. There are several exceptions, *i. e.* where the voyage is lost by the fault of the owners, as if the ship be seized for the debt or on account of having contraband goods, or where the ship goes out in pursuit of a freight and returns disappointed without a cargo. A rule so evidently bending to reasonable exceptions can never be considered as universally conclusive in the

\* 37. It is the duty of mariners to use their utmost endeavours to save the ship, and if they preserve part thereof, the master is bound to allow them a reasonable consideration to enable them to reach their native country; but if they do not use such endeavours, they are not entitled to such provision, but wholly lose their wages on the loss of the ship. *Laws of Oleron, cited in Godolphin's Adm. Jur.*, 2d ed., anno 1685, ext. 3.

† 38. There are some exceptions to the rule that freight must be earned to entitle to wages. If the voyage or freight be lost by negligence, fraud, or misconduct of the owner or master, or voluntarily abandoned by them; if the owner have contracted for freight upon terms or contingencies differing from the general rules of the Maritime Law; or if he have chartered his ship to take freight at a foreign port, and none is to be earned on the outward voyage; in all these cases the mariners are entitled to wages, notwithstanding no freight has accrued. *The Saratoga*, 2 Gallison's (AMERICAN) Rep. 175.

39. There may be an intermediate voyage, which does not constitute a part of the return voyage; and the general rule is, that seamen are entitled to wages not only when the owner earns freight, but when but for his own act he might have earned it. *The Two Catherines*, 2 Mason's (AMERICAN) Rep. 319.

40. If freight be decreed or allowed for the whole voyage, then the mariners are entitled to the full wages for the whole voyage, for the decree for freight, in such case, includes an allowance of the full wages, and consequently creates a trust or lien to that extent thereon, for the benefit of the mariners. If the freight decreed or allowed be for a part of the voyage only, the seamen are ordinarily entitled only to wages up to the time for which the freight is given, unless under special circumstances, as where they have remained by the ship at the request of the master, to preserve and protect the property for the benefit of all concerned. *Brown v. Lull*, 2 Sumner's (AMERICAN) Rep. 443.

absence of all other confirmation. *The Neptune, Clark*, 1 Hagg. 232, 233.

140. A mariner may be entitled to wages though no freight be earned, as where a vessel goes out on a seeking voyage in search of freight and obtains none. Though freight is the mother of wages, and where freight is made wages are due, it does not follow in all cases that if there be no freight there can be no wages. *The Lady Durham, Stuart*, 3 Hagg. 202.

141. Insurance of ship and cargo by the owner will not give the seaman a legal right to wages where the ship and cargo are lost. In a claim for wages preferred by mariner in such a case, no freight having been earned, there being only one adventure of barter and no divided voyage, summary petition of the mariner rejected in conformity with the general rule of law, that freight must be earned for wages to enure. *Ibid.* 196.

142. Where it is stipulated that seamen shall not demand or be entitled to their wages, or any part thereof, until the arrival of the ship in the port of discharge, they cannot, on a loss before arrival, claim wages *pro rata* on the ground that freight had been earned at an intermediate port. *Appleby v. Dodds* (1809), 8 East, 300; (but see 7 & 8 Vict. c. 112. s. 5., *post*, No. 143.)

143. The law of the Admiralty, that freight is the mother of wages, may be superseded by special agreement. *Campion v. Nicholas*, Str. 405.

144. Wages in general are due upon the ship's arrival at the first port of destination or delivery. In a voyage from England to Newfoundland, and thence with fish to Spain, Newfoundland is not a port of delivery, and if the ship be taken between Newfoundland and Spain, the mariner loses his wages. *Hernaman v. Bowden*, 3 B. M. 1844. \*

145. A ship was hired by government to take out convicts to Van Diemen's Land. From that place she sailed to Batavia and on several other trading voyages, and then on the homeward voyage to England, and

arrived safe at St. Helena, but was lost before arrival at the port of discharge, and all on board perished: *Held*, that the seaman was entitled to wages *pro rata* for the outward voyage. *Harris v. Iwe*, 1 Har. & W. 238.

146. In a divided voyage, where there has been a delivery of cargo at different ports and freights earned at such ports, wages are due *pro rata*, though the ship be lost before arriving at her final port of discharge. *The Juliana, Ogilvie*, 2 Dodson, 504.; *The Lady Durham, Stuart*, 3 Hagg. 202.

*See ante*, Nos. 129. 132. 134.

#### 15. In cases of deficiency of provisions.

147. By 7 & 8 Vict. c. 112. s. 12. if, during the voyage, the allowance of provisions to any seaman shall be reduced one third or less, he shall receive four pence a day, and if more than one third eight pence a day, during the period of such deductions, and such allowance shall be paid in addition to and be recoverable as wages.

#### 16. By what circumstances barred—*et contra*.

##### (a) Statutory regulations thereon.

148. By 7 & 8 Vict. c. 112. s. 5. no seaman, by reason of any agreement, shall forfeit his lien on the ship, nor be deprived of any remedy for the recovery of his wages to which he would otherwise be entitled against any person whatever, and no agreement contrary to or inconsistent with this act, nor any clause, contract, or engagement whereby any seaman shall consent to forego any claim to wages in case of freight earned by a ship subsequently lost, or any claim to salvage, or otherwise, shall be valid or binding on such seaman.

##### (b) Stipulations prior to such statute. †

149. Bonds taken by owners from mariners, binding themselves not to claim wages unless the ship returned in safety to the port from which she set out, *Held* not to

\* 41. By the custom of merchants, mariners are entitled to wages at every delivering port, though an agreement be made with them that they shall not demand wages till a return to the port of London, when the freight was also to be paid, and provision was made before the voyage began that every six months wages should be paid for one month during the voyage. 2 *Ver.* 728.

† 42. Prior to the stat. 7 & 8 Vict. c. 112. the Court of Admiralty had at all times asserted its

right, as a Court of Equity, to examine whether the clauses of ship's articles were reasonable, and as such binding on the mariners; but in the Courts of Law stricter principles of interpretation obtained, and the ignorance and improvidence of seamen, and their inability to appreciate the meaning and effect of a long multifarious instrument led to the frequent scandal of cases of great cruelty and injustice. *Abb. Sh.* 610.

bar the mariner's claim for wages on the outward voyage. *The Juliana, Ogilvie*, 2 Dodson, 511.

150. In a divided voyage, freight having been earned, but the vessel having been afterwards wrecked on her return voyage, on a claim for wages being preferred by a mariner, an article in the mariner's contract, stipulating that he should not be entitled to any wages until the return of the ship to the port from whence it set out, *Held* not to bar his claim for such wages. Allegation pleading such stipulation rejected accordingly. *Ibid.* 504.

151. The captain of a ship on an outward-bound voyage took bonds from his seamen to himself in 200*l.* penalty, conditioned that they should not demand any wages until the ship arrived in the port of London. The ship was lost, and the seamen sued the captain for their wages: *Held*, that those bonds were unjust and void in law. *Buck v. Raoulinson*, 1 Brown, P. C. 138., Abb. Sh. 626.

152. A seaman entered into articles to serve on board the ship R., "bound from the port of L. to the S. S., to procure a cargo of sperm oil, and to return therewith to the port of L., where the voyage was to end:" instead of wages he was to receive a certain share of the nett proceeds of the cargo, and it was stipulated that no one of the crew should "demand or be entitled to his share of the nett proceeds of the said cargo until the arrival of the said ship or vessel at L., and her cargo should be there sold and delivered, and the money for the same actually received by the owners." A cargo was procured; the ship was afterwards condemned in a foreign port, and the mariner accompanied part of the cargo on its homeward voyage (it having been transhipped into another vessel, the A.), but died at sea: *Held*, that "until" in the above articles is a word of limitation of the mariner's right to wages, and not of postponement of payment of them merely, and, consequently, that as the ship did not return to L. the administrator of the mariner was not entitled to recover his share of the nett proceeds of the R.'s cargo, but only to recover on a *quantum meruit* for his services on board the A. *Jesse v. Roy*, 1 C. M. & R. 316., 4 Tyr. 626.

153. Where a seaman, about to proceed on a trading voyage, entered into and signed articles whereby he agreed not to sue for wages any of the owners except one, who was the captain, and who alone was a party to the articles: *Held*, that he could not sue

the other owners, although they sold and received the proceeds of the cargo, and one of them, the managing owner, adjusted the wages, and settled with the seamen. *M'Auliff v. Bicknell*, 2 C. M. & R. 263., 1 Gale, 232., 5 Tyr. 1035.

154. A seaman having contracted to go a voyage from A. to B. and back again, with a stipulation that he should not be entitled to his wages till the end of the voyage, cannot maintain a general *indebitatus assumpsit* to recover his wages *pro rata* as far as B., though he were there wrongfully dismissed by the defendant, the captain; but his remedy is either for the breach of the special contract, or for such tortious act of the captain's whereby he was prevented from earning his wages. *Hulle v. Heightman*, 2 East, 145., 4 Esp. 75., Abb. Sh. 482.

155. A sailor, under articles providing for a forfeiture of wages in case of breach of any of his engagements, among which is that of serving faithfully during the voyage, can recover nothing if he be left ashore in the course of it owing to his own fault in being absent, though he had no intention of deserting. *Sherman v. Bennett*, M. & M. 489. (Tenterden.)

156. By a clause in the ship's articles of a South Sea whaler, the seamen serving on board were to lose their wages if they did not return with the ship to the port of London. After serving twenty-seven months, some of the seamen were, with the consent of the captain, exchanged into another ship for others belonging to that ship: *Held*, that if these seamen had lost their wages under the articles, they could, at any rate, receive a reasonable compensation for their services under the count for work and labour. *Hillyard v. Mount*, 3 Car. & P. 93. (Tenterden.)

157. If a sailor, hired for a voyage, take a promissory note from his employer for a certain sum, provided he proceed, continue, and do his duty on board for the voyage, and, before the arrival of the ship, he dies, no wages can be claimed, either on the contract or on a *quantum meruit*. *Cutler v. Powell*, 6 T. R. 320., Abb. Sh. 624.

See MARINERS' CONTRACTS,  
cap. III. sect. 2.

#### (c) Other circumstances.

158. The submission for the time of mariners to the violation of the mariners' contract will not defeat their right to legal redress. *The Minerva, Bell*, 1 Hagg. 363. 367, 368.

159. An award of magistrates under 59 Geo. 3. c. 58. of a balance of wages, notwithstanding the production of a receipt for the same, fraudulently obtained, affirmed with costs. *The Minerva, Dale*, Ibid. 54.

160. A mariner, who having been offered his wages in money, elected to take part thereof in a bill of exchange on the owner, who afterwards became a bankrupt, in consequence of which the bill was dishonoured, *Held* not to be entitled to arrest the ship for wages to the amount of such bill, on the ground that, having made his election, he must stand by the risk. *The William Money, Jackson*, 2 Hagg. 136.

161. The plaintiff's wages were adjusted, and the balance struck, subject to certain deductions for insurance and interest on advances made to him before and during the voyage. It was proved that such charges were the usual ones in trading voyages, and that the amounts were always so made out. The plaintiff remonstrated against such deductions, but ultimately accepted the balance and gave a receipt for the whole wages: *Held*, that he could not recover the amount of such deductions. *M'Auliff v. Bicknell*, 2 C. M. & R. 263., 1 Gale, 232., 5 Tyr. 1035.

162. If a sailor engage on a whaling voyage, and is to receive a certain proportion of the profits of the voyage in lieu of wages when the cargo is sold, he may maintain an action for his wages against the captain, and shall not be considered as a partner. *Wilkinson v. Frasier*, 4 Esp. 182. (Alvanley.)

163. Where the captain of a ship has accounted upon oath to the collector of the port for a sum of money as the wages due to a deceased seaman, and paid the same to Greenwich Hospital under the 37 Geo. 3. c. 73. the representative of such seaman

may still sue the captain for any wages due beyond the sum so paid. *Armstrong v. Smith*, 1 N. R. 299., Abb. Sh. 624.

#### 17. Cases of set-off.

164. In a claim for wages preferred by the purser, an allegation on the part of the owner, pleading as a set-off a charge for the passage of the purser's wife, rejected; the Court holding, that it had no jurisdiction to enter into the merits of the plea, and that the owner must make such a claim, if at all, in another Court. Wages (admitted to be due) pronounced for, with costs. *The Lady Campbell, Beetham*, 2 Hagg. 14. n.

165. Damage to the cargo (for which a deduction of freight had been made) arising from gross negligence of the second mate, *Held* to be pleadable as a set-off against his claim for wages. Allegation pleading same admitted accordingly. *The New Phoenix, Barton*, 2 Hagg. 420.

#### VII. OF THE FORFEITURE OF—\*

##### 1. General considerations as to—

166. The use of intemperate language by the seamen does not touch the merits in a suit for wages, except at a very great distance. *The Eliza, Ireland*, 1 Hagg. 185.

167. The rules and principles of law applicable to a total or partial forfeiture of wages may be deduced from the mariners' contract, the very object of which is to fix the duties between the parties. *The Lima, Fewson*, 3 Hagg. 359.

168. The dictum that any cause which will justify a master in discharging a seaman during the voyage will also deprive the seaman of his wages, *held* to be an insufficient test; but that the rule should be, that wages may be forfeited, not in cases of dis-

\* 43. Though the regulations prescribed by the stat. 5 & 6 W. 4. c. 19. to protect the mariner against an undue infliction of forfeitures, such as the entry in the log-book of the circumstances attending the alleged offence, may not have been complied with by the master, and the statutory forfeitures therefore not in such cases incurred; yet proof of the mariner's misconduct to the satisfaction of the Court of Admiralty may furnish a defence to an action brought by him for his wages against the master or owners. *Abb. Sh.* 172.

44. It is not a single neglect of duty or a single act of disobedience which ordinarily carries with it the forfeiture of wages; there must have been a case of high and aggravated neglect or disobedience, importing the most serious mischief, peril, or wrong; a case calling for exemplary punishment and admitting no reasonable mitigation; a case

involving a very gross breach of the stipulated contract for hire, and going in its character and consequences to the very essence of its provisions. *The Mentor*, 4 Mason's (AMERICAN) Rep. 84.

45. Where seamen have been guilty of inflamed offences, and serious violations of duty under circumstances of an aggravated nature, if they testify by their subsequent conduct a thorough repentance, and offer amends for the wrong, and show a subsequent exemplary diligence, there is no stubborn rule of law that prohibits the Court from mitigating the forfeiture, and giving them the whole or a portion of their wages, according to its discretion. *Ibid.*

46. Wages forfeited for an offence are only such as are earned antecedently, and not subsequently to the offence. *Ibid.*

charge for mere misconduct alone, but for such as renders the seaman's discharge imperatively necessary for the safety of the ship and the due preservation of discipline. *The Blake, Hadden*, 1 W. Rob. 73.

169. Misconduct on the part of a previous master and officers, as necessarily weakening the discipline of the ship, is a circumstance worthy of consideration in adjudicating as to a forfeiture of wages on the ground of subsequent misconduct of a mariner. *Ibid.* 76.

170. In a suit for wages, where the misconduct of the mariner is set up in bar to his claim, the Court has no power to mitigate the penalty, but must pronounce for or against the whole claim. *Ibid.* 87.

171. By 7 Geo. 1. c. 21. s. 2. all agreements for the wages of any person serving on board any ship in the service of foreigners, and bound or designed to trade in the East Indies or parts therein mentioned, and employed in such voyages, are declared void.

*See post, Note 51.*

## 2. What circumstances will amount to condonation of — et contra.\*

172. A master who suffers the mutinous conduct of a mariner at the very outset of the voyage to pass with perfect licence and impunity, when it was within his power and duty to redress himself, comes into Court with a very ill grace to require redress, by forfeiture of wages, for subsequent ill behaviour. *The Ealing Grove, Falconer*, 2 Hagg. 19.

173. A master in a foreign port hired a partially new crew, retaining in the service of the vessel a man, whom, on his afterwards bringing a suit for wages, he charged with having been guilty of embezzlement and disobedience of orders at a time prior to the hiring of the new crew, at which time the embezzlement was known to him. *Quære*, is not the retention of the man under such circumstances a condonation of those offences? *The Test, Brown* (2), 3 Hagg. 315.

174. Where it is provided by a ship's articles, that any of the crew who shall absent themselves from the ship without leave shall forfeit their wages, if after one of the crew has so absented himself the master receive him back again and allow him to work like the others, the forfeiture

is waived, and the wages are recoverable. *Miller v. Brant*, 2 Camp. 590. (Ellenborough), Abb. Sh. 176. 649.

175. If seamen have incurred a forfeiture of their wages, and in time of distress, when the ship is aground, the captain call on those seamen to assist in getting her off, this is no waiver of the forfeiture, but if the captain continue them in their work after the peril is over, it is otherwise. *Train v. Bennett*, 3 Car. & P. 3., M. & M. 82. (Tenterden), Abb. Sh. 649.

## 3. Mode of computation of —

176. By 7 & 8 Vict. c. 112. s. 8. in all cases where the seaman shall have contracted for wages by the voyage, the run, or the share, and not by the month or other stated period of time, the amount of forfeitures to be incurred by seamen under this act shall be ascertained thus: — if the whole time spent in the voyage shall exceed one month, the forfeiture of one month's pay expressed in this act shall be taken to be a forfeiture of a sum of money, bearing the same proportion to the whole wages or share, as a month shall bear to the whole time spent in the voyage; and in like manner a forfeiture of six days' pay or less shall be taken to be a forfeiture of a sum bearing the same proportion to the whole wages or share, as the six days or other period shall to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed the period for which the pay is to be forfeited, the forfeiture shall be taken to be a forfeiture of the whole wages, and the master or owner is thereby authorized to deduct the amount of such forfeitures from such seaman's wages.

## VIII. WHAT ACTS WILL WORK A FORFEITURE OF — ET CONTRA.

### 1. Mutinous conduct.

177. Insolent expressions and acts of a mutinous tendency not apologised for, and for which the mariner had been put in irons, *Held* to amount to a forfeiture of wages. *The Susan, Hamilton*, 2 Hagg. 229. n.

178. A chief mate, who unknown to the master signs, and is active in getting signed, a document tending to mutiny, incurs a

\* 47. A master has power to remit a forfeiture of wages, and his pardon is a reintegration of the

seamen in the right of wages. *The Mentor*, 4 Mason's (AMERICAN) Rep. 84.



forfeiture of his wages. *The Lima, Fewson*, 3 Hagg. 356.

179. A chief mate, after having served in that capacity for six weeks while the ship was fitting out, and also between eight and nine months at sea (having been suspended during that time for a week, but afterwards reinstated), was then finally disrated for neglectful conduct, disrespectful language, and the loss of a boat in his charge, arising from disobedience of orders, and by which two lives were lost. His subsequent conduct while in the ship tended to the creation of mutinous misconduct. In a suit for wages brought by him, *Held* that such conduct enured to a forfeiture of his wages, and the suit dismissed accordingly, but without costs, the Court holding that there were fair grounds for bringing the case before the Court, and that there was some degree of passion and imprudence imputable to the master, the sole owner. Decision affirmed on appeal. *Ibid.* 346.

*See post*, No. 226.

## 2. Desertion.\*

### (a) Generally.

180. If a mariner or ship's carpenter desert he forfeits his wages due. *Anon.* Mod. 93.

181. The ancient Maritime Law with reference to desertion has not been abrogated by the statute 5 & 6 W. 4. c. 19., except in the cases to which the statute exclusively applies. *The Westmorland, Brigstock*, 1 W. Rob. 221.; *The Two Sisters, Davison*, 2 W. Rob. 137.

182. In a case of alleged desertion, the Court of Admiralty can and will inquire into the legality of an order of magistrates under which the mariner had been imprisoned for desertion, so far at least as that imprisonment bears on the question of desertion. *The Westmorland, Brigstock*, 1 W. Rob. 224.

183. Permission of absence given by a

master to a mariner, *Held* to imply a stipulation to return, though such obligation of return may not have been expressed. *The Bulmer, Brown*, 1 Hagg. 167, 168.

### (b) Statutory regulations thereon.

184. By 7 & 8 Vict. c. 112. s. 9. any seaman who shall desert his ship shall forfeit to the owner all his clothes and effects which he may leave on board, and all wages and emoluments whatever due to him; and, in case of his deserting abroad, he shall likewise forfeit all wages and emoluments agreed to be paid to him by the master or owner of any other ship in which he may have engaged for the return voyage. Such wages and emoluments so forfeited shall be applied towards the reimbursement of the expenses occasioned by his desertion, and the remainder to the Seaman's Hospital Society, provided that every desertion be entered in the log-book at the time, and certified by the signatures of the master and of the mate or one other credible witness; and the absence of a seaman from his ship for any time within twenty-four hours before her leaving port, whether before or during the voyage, wilfully and knowingly without permission, or at or for any time without permission, and under circumstances showing an intention to abandon the same, shall be deemed a desertion; and in case any seaman shall desert beyond sea and the master shall engage a substitute at higher wages, he shall be entitled to recover, in like manner as penalties are by this act recoverable, from the deserter any such excess of wages beyond what would have been payable to him had he not deserted; provided that no seaman shall be imprisoned longer than three months for nonpayment of such excess of wages.

### (c) What circumstances will amount to—

185. Where the articles were for a run

\* 48. Desertion, in the sense of the Maritime Law, is a quitting of the ship and her service, not only without leave and against the duty of the party, but with an intent not again to return to the ship's duty. *Cloutman v. Tunison*, 1 Sumner's (AMERICAN) Rep. 373.

49. By the general Maritime Law, desertion from the ship in the course of the voyage is held to be a forfeiture of the antecedent wages earned by the party; and this rule is equally applicable to the officers as to the seamen. *Ibid.*

50. Desertion, to work a forfeiture of wages, must be during the voyage. Desertion after the ship has arrived at her last port of destination, and

is moored in safety in the proper and accustomed place, although within the period for which the party is bound to do duty on board, is not during the voyage, and will not, by the general Maritime Law, incur a forfeiture of the whole wages. *Ibid.*

51. But even in a case of clear desertion, if the party repent, seek to return to his duty, and to repair the injury sustained, he is entitled to be received on board again, if he tender his services within a reasonable time, and before another person has been engaged in his stead, and if his prior conduct has not been so flagrantly wrong that it would justify his discharge. *Ibid.*

to the port of Hull, which lies some way up the river Humber, and the port being too full for entry, the vessel came to anchor in the mouth of the river, and the seamen there left her, *Held*, that the vessel had not arrived, and that the seamen were bound to go up the river, the port of Hull not being the Humber. Wages pronounced forfeited by reason of such desertion, though admitted not to be a malicious desertion. *The Pearl, Denton*, 5 C. Rob. 224.

186. Claim for wages made by a mariner who left the ship with the permission of the master for a short time, but refused to return thereto when required by the master, pronounced against with costs, as forfeited by reason of desertion. *The Bulmer, Brown*, 1 Hagg. 163.

187. A mariner who quitted his ship on being ordered so to do by the mate, and on applying to the master on shore for his discharge was directed to return to the ship, which he refused and neglected to do, but engaged himself on board another ship, *Held* to have forfeited his wages thereby, such conduct amounting to desertion. *The Jupiter, Crosbie*, 2 Hagg. 221.

188. A mariner who quitted his vessel in defiance of the master, with opprobrious language, and without any declaration at the time of his intention to enter a King's ship, which he did, however, within twenty-four hours afterwards; *Held* to have been guilty of desertion, enuring to a forfeiture of his wages in the merchant vessel, notwithstanding that by the 2 Geo. 3. c. 36. s. 13. it is provided, that entry on board a King's ship shall not be deemed a forfeiture of wages, and that the articles of the merchant vessel stipulated, that mere absence for less than twenty-four hours should not be deemed desertion; that clause in the articles being *held* to relate to occasional absences, and not to such a wilful denial of authority and refusal of duty. *The Amphitrite, Morgan*, *Ibid.* 403. 405.

189. If a seaman who has signed the articles of agreement required by 5 & 6 W. 4. c. 19. previously to sailing on a voyage, absolutely desert the ship (*viz.* leave her without any intention of returning), during the twenty-four hours immediately preceding her sailing, or at any time afterwards, before she is moored at her port of delivery, he forfeits all his wages, &c. under the 9th section. *M'Donald v. Jopling*, 4 Mee. & W. 285., 1 Horn & H. 271., 2 Jur. 790., Abb. Sh. 645.

(d) *What circumstances will not amount to —*

190. A mariner dismissed the ship without lawful cause is not to be deemed a deserter. *Limland v. Stephens*, 3 Esp. 269.; *Sigard v. Roberts*, 3 Esp. 72., Smith's Merc. Law, 402.

191. Refusal of mariners to perform their duties is insubordination, not desertion. *The Westmorland, Brigstock*, 1 W. Rob. 222.

192. A claim for seamen's wages pronounced for, the owners having failed in proof of desertion pleaded by them, not having shown any agreement as to the time of service. *The George, Banifer*, 1 Hagg. 168. n.

193. A claim for wages pronounced for, and half wages from the time of the mariners' quitting the ship decreed, notwithstanding the mariners having left the ship without permission, which they were *held* to be justified in having done, the master having set out on a further voyage not specified in the mariners' contract, and having altered the contract accordingly without the consent of the mariners. *The Eliza, Ireland*, *Ibid.* 182.

194. In a suit for wages, the conduct of the mariners in quitting the ship in a foreign port in consequence of a quarrel with the captain, it being questionable whether he did not during the quarrel give them permission to depart, *Held*, though improper, not to amount to desertion. A tender of wages up to the time of their joining another vessel, made by the captain before action, pronounced for, but without costs. The Court likewise refused to pronounce for any allowance for the travelling expenses, &c. of the mariners to join the other ship. *The Frederick, Hearn*, *Ibid.* 211.

195. Mariners having obtained leave to go on shore at a foreign port, got drunk there, and solely in consequence thereof failed to return by the time prescribed. *Held*, that such conduct was criminal, and a just subject of punishment, but did not amount to desertion enuring to a forfeiture of wages. *The Ealing Grove, Falconer*, 2 Hagg. 22.

196. An intention to commit a desertion, set up as a defence to cruelty, on the ground of the mariner, the ship's cook, having gone on shore (it being a question whether he was authorized to do so), and in consequence of a disorderly frolic, having been locked up in prison as a disorderly

person, but released on application of the captain, *Held* not sustained, and such acts not to amount to a desertion. *The Agincourt, Mahon*, 1 Hagg. 281.

197. Mariners refused by the captain permission to go on shore, under circumstances rendering the refusal a harsh and indiscreet act of authority, having gone on shore to complain thereof, and having at the complaint of the captain been confined for twenty-five days in the House of Correction, *Held* to be justified by such mode of treatment in retiring from the ship, and their having so done not to enure to a forfeiture of wages. *The Minerva, Bell*, Ibid. 368.

198. A claim of a mariner for wages, opposed on the ground of his having at the foreign port of destination, where he obtained leave to go on shore, got drunk, and in consequence thereof, not having returned to his ship by the time prescribed, for which he had been punished by an imprisonment there of seventy-five days, pronounced for, with costs. *The Ealing Grove, Falconer*, 2 Hagg. 15.

199. In a claim for wages opposed on the ground of desertion, the mariners having refused to work, and gone ashore without leave, to seek advice as to the effect of the ship's articles, which were obscure; but having been shortly afterwards imprisoned for such conduct by order of magistrates at the suit of the master, on refusing, under advice, to return to the ship, wages pronounced for, with costs. The threat of illegal imprisonment, even to enforce a lawful obligation, is an important ingredient in the consideration of such a case. *A fortiori* is the imprisonment itself, as rendering that which existed at the moment, principally, though not entirely, a declaration, and which was not a consummated desertion, absolute and complete, and taking away all *locus poenitentiae* by bodily duress, for had not the threat been used or the imprisonment inflicted, the seamen might (and they are entitled to the benefit of the doubt) have returned to their duty. *The Westmorland, Brigstock*, 1 W. Rob. 216. 225.

200. In a suit for wages, opposed on the ground of a total desertion, *Held*, that the proof adduced by the owners of the mariner's having quitted the vessel at Swansea, on

her return voyage (her port of discharge being London) without leave, and remained absent two days, but under circumstances denoting an *animus revertendi*, he having afterwards offered to return to his duty, not to amount to a total desertion, entailing a forfeiture of the whole wages either under the 5 & 6 W. 4. c. 19. or by the general Maritime Law. Wages pronounced for accordingly, with costs, and under the circumstances of the case, and no charge of temporary desertion being made by the owners in plea or argument, without any deduction on the ground of temporary desertion. *The Two Sisters, Davison*, 2 W. Rob. 125.

201. In a suit for wages promoted by a mariner who had engaged to serve on board a collier from Shields to London and back, and who quitted the vessel at the port of London in consequence of not being supplied with provisions; *Held*, that an abandonment of the ship under such circumstances did not work a forfeiture of wages. Wages pronounced for accordingly, with costs. *The Castilia, Stewart*, 1 Hagg. 59.

202. If a master of a ship by inhuman treatment compel a sailor to quit a ship, it is not such a desertion as will amount to a forfeiture of his wages for the voyage performed. *Limland v. Stephens*, 3 Esp. 269. (Kenyon), Abb. Sh. 174.\*

203. Going on shore without leave, to obtain advice as to the effect of ship's articles, there being a sufficient degree of obscurity in them to justify the mariners in seeking information thereon, is not desertion working a forfeiture of wages. *The Westmorland, Brigstock*, 1 W. Rob. 223.

204. If seamen go on shore on the ship's duty, and when the boat is about to return, request to be permitted to remain on shore to get some victuals, which is refused, and the boat goes without them, if they afterwards go and offer to return to their duty on board the ship, it is not a desertion. *Sigard v. Roberts*, 3 Esp. 71. (Eldon), Abb. Sh. 175., Harrison, 6189.

(e) *Of the onus of proof of —*

205. To constitute a total desertion entailing a forfeiture of wages, it must be proved or capable of inference from the *res gestæ* of the case that the mariner

\* 52. Cruel and oppressive treatment by the master will justify a seaman in deserting the vessel before the termination of the voyage, and in such a case he will not forfeit his wages, but will be en-

titled to them to the prosperous termination of the voyage. *Sherwood v. McIntosh*, Admiralty Decisions in the District Court of Maine (United States); see Curtis's (AMERICAN) Admiralty Digest, 522.

quitted the ship *sine animo revertendi*. *The Two Sisters, Davison*, 2 W. Rob. 138.

206. And the onus of proof thereof lies on the owner. *Ibid.* 134.

*See antè, No. 184.*

### 3. *Absence without leave.\**

#### (a) *Generally.*

207. By 7 & 8 Vict. c. 112. s. 7. if any seaman during the period of his service shall wilfully and without leave absent himself from the ship or otherwise from his duty, he shall (in all cases, not of desertion or not treated as such by the master) forfeit out of his wages two days' pay, and for every twenty-four hours of such absence six days' pay, or, at the option of the master, the amount of the expenses incurred in hiring a substitute; but no such forfeiture shall be incurred unless the fact of the seaman's absence shall be duly entered in the ship's log-book, the truth of which entry it shall be incumbent on the owner or master in all cases of dispute to substantiate by the evidence of the mate or other credible witness.

208. *Seemle*, that a charge of total desertion will not entitle owners to claim deductions from wages as for a temporary desertion without a charge of such temporary desertion being pleaded and put in evidence. *The Two Sisters, Davison*, 2 W. Rob. 125.

209. To entitle the master to deduct a month's wages for the benefit of Greenwich Hospital, under the 2 Geo. 2. c. 36. ss. 6. 9., it is incumbent on him to show that the seaman quitted the ship without leave in writing; and such a deduction cannot be set off by the master in an action for wages by the seaman, unless the master has previously debited himself to Greenwich Hospital for the amount, in a book kept according to the direction of the statute. *Frontine v. Frost*, 3 B. & P. 302., Abb. Sh. 648.

*See antè, Nos. 184. to 204.*

#### (b) *After the ship's arrival in port.*

210. By 7 & 8 Vict. c. 112. s. 7. if any seaman after the ship's arrival at her port of delivery, and before her cargo shall be discharged, shall quit the ship without a previous discharge or leave of the master, he shall forfeit one month's pay out of his

wages, but no such forfeiture shall be incurred unless the fact of the seaman's absence shall be duly entered in the log, the truth of which entry it shall be incumbent on the owner or master in all cases of dispute to substantiate by the evidence of the mate or other credible witness.

211. Certain articles of agreement for service in a privateer contained a clause imposing the penalty of forfeiture of wages for twenty-four hours' absence without leave, and also the following memorandum in the margin, *viz.* "to leave at the end of three months if the ship be in port and in perfect safety." The ship belonged to London. The captain's cook, who had signed these articles, brought an action against the master for wages. It appeared that the plaintiff had served ten months, and on his return from a cruise, while the ship was in Yarmouth roads, and the master was on shore, he asked leave of the mate to go on shore and see his wife, but was told by the mate that he could not say whether he might have leave or not; the plaintiff, however, went on shore, and did not afterwards join the ship. *Held* that, under such circumstances, the master could not have refused the plaintiff leave without a sufficient reason, and the jury having found that the ship was in a place of safety when the plaintiff quitted it, a verdict was given for the plaintiff, of which the Court of Common Pleas afterwards approved. *Neave v. Pratt* (1805), 2 N. R. 408., Abb. Sh. 647.

212. A seaman who quits his ship after her arrival in port, but before she is moored, does not thereby subject himself to the forfeiture of his whole wages under the 2 Geo. 2. c. 36. s. 3. *Frontine v. Frost*, 3 B. & P. 302., Abb. Sh. 648.

213. The general Maritime Law, and in cases in the West India trade the statute law, require that the mariners shall stay by the vessel until the unlivery of the cargo. *The Baltic Merchant, Smith*, Edwards, 91.

214. Prior to the 5 & 6 W. 4. c. 19. in a case in which the mariner left the ship when arrived in port, but before unlivery of her cargo, *Held* that the owner was entitled to some deduction from the wages as a compensation for the imperfect execution of the contract by reason of such desertion; that this compensation was not *in modum pœnæ* but for injury received,

\* 53. The mariners ought not to leave the ship whilst in a foreign port without leave of the master; but when the vessel is at anchor or at her moorings, they may do so, returning in due time,

provided only a sufficient number of mariners remain. *Laws of Oleron, cited in Godolphin's Adm. Jur.* 2d ed, anno 1685. ext. 5.

and that the statute giving a month's wages to Greenwich Hospital in such cases of desertion did not supersede the rights of the owner to compensation under the general law. *Ibid.* 91. 93.

215. The law of England in ordinary cases requires the mariner to stay by the ship till the discharge of the cargo, but this is only where the other party has done nothing to supersede the contract. *The Cambridge, Barber*, 2 Hagg. 246.

216. Illness held to be a reasonable and legal cause for a mariner leaving the ship before delivery of cargo or a legal discharge. *The Test, Brown* (2), 3 Hagg. 315.

217. *Quære*, Is it a custom of the port of London that the crew of a collier are only bound to remain by her five market days? *The Castilia, Stewart*, 1 Hagg. 61.

218. A mariner quitting the ship without any *animus revertendi* after her arrival and being moored at her port of delivery, but before the discharge of the cargo, does not thereby incur a forfeiture of all, but only of a month's wages under 5 & 6 W. 4. c. 19. *The Test, Brown* (2), 3 Hagg. 316. n.; *McDonald v. Jopling*, 4 Mees. & W. 285., Abb. Sh. 645.

219. In a claim for wages to the amount of 8*l.* 8*s.* 6*d.* preferred by a mariner, a tender of 5*l.* 3*s.* 6*d.* was made by the owners, and a defensive allegation offered by them, pleading a month's forfeiture for refusing to work and quitting the ship without leave during the delivery of the cargo. The mariner's contract stipulated that the mariner was not to leave the vessel during the delivery of the cargo, and there was an entry in the log to the effect that he refused to assist in clearing the deck, and left the vessel without leave. Held that the mariner was from the time of the contract and ship's books being brought in out of Court by his own agreement, and the suit dismissed as *coram non judice*, the Court intimating that it was a case within the summary jurisdiction of a magistrate under 5 & 6 W. 4. c. 19. *The Test, Brown* (1), 3 Hagg. 305.

#### 4. Disobedience of orders.\*

220. By 7 & 8 Vict. c. 112. s. 7. if any seaman during the period of his service

shall without sufficient cause neglect or refuse to perform his duty, he shall forfeit out of his wages two days' pay, and for every twenty-four hours' continuance of such conduct six days' pay, but no such forfeiture shall be incurred unless the fact of the seaman's neglect or refusal shall be duly entered in the log-book, the truth of which entry it shall be incumbent on the owner or master in all cases of dispute to substantiate by the evidence of the mate or other credible witness.

221. Disobedience of orders being an offence of the grossest kind, it is not a peremptory or harsh tone, or an over-charged manner in the exercise of authority, that will justify resistance. It will not be sufficient that there has been a want of that personal attention and civility which usually takes place on other occasions and might be wished generally to attend the exercise of authority. The persons subject to authority on shipboard are not to be captious, or to take exception to a neglect of formal and ceremonious observance of behaviour. *Robinett v. The Exeter*, 2 C. Rob. 261.

222. It is not a single neglect of duty nor a single act of disobedience which ordinarily carries with it the forfeiture of wages. *The Lima, Fewson*, 3 Hagg. 362. n.

223. The Court draws a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas. *The Blake, Hadden*, 1 W. Rob. 87, 88.

224. Disobedience of orders and refusal to work by a mariner, during seven days, while the vessel was in a foreign port and in charge of the chief mate, (the master being on shore), who was so quarrelsome that he was there discharged with others of the crew, the mariner being admitted to be quiet and inoffensive and to have conducted himself properly before and afterwards during a long voyage, Held not to work a forfeiture of, or deduction from, his wages. *The Test, Brown* (2), 3 Hagg. 315.

225. Disobedience of orders committed in a state of intoxication upon one occasion only, while the vessel was in port, and followed by an efficient performance of duty during the remainder of the voyage, Held, though highly reprehensible, not to enure

\* 54. A refusal to do duty at a moment of high excitement from punishment, if not followed by obstinate perseverance, is not a forfeiture of wages. *Orne v. Townsend*, 4 Mason's (AMERICAN) Rep. 541.

55. Wages are not always forfeited by disobedience of orders, unattended by aggravated circumstances. *Drysdale v. The schooner Ranger*, Bee's (AMERICAN) Rep. 148.

to a forfeiture of wages. Wages accordingly pronounced for, with costs. *The Blake, Hadden*, 1 W. Rob. 73.

226. In an action of assumpsit on the ship's articles upon a South Sea voyage, against the owner, by a carpenter's mate, for wrongfully discharging him before the end of the voyage, whereby his wages were lost, it was pleaded on behalf of the owner (after stating the articles, whereby the plaintiff stipulated against mutiny and disobedience of the captain's orders, &c.), that during the voyage the captain died, that the chief mate took upon himself and exercised the duties, and that the plaintiff refused obedience to his orders, whereupon he was discharged and put on shore; to which it was replied that although the mate became, &c., and exercised the duties, &c., nevertheless, &c., *de injuriâ absque resid. caus.* It appeared on the trial that the mate was a foreigner and in no way qualified to command under the 3 & 4 W. 4. c. 54. s. 16., but it was *Held* that the plaintiff having by his replication admitted him to be master, he could not, under the allegation *de injuriâ*, offer evidence of his disqualification, and that a refusal to navigate the vessel, except to an English port, was mutiny against the master *de facto*, and sustained the justification. *Renno v. Bennett*, 3 Ad. & Ell. N.S. 768.

227. If a seaman's claim for wages be resisted on the ground that he would not do his work, which by the ship's articles is to cause forfeiture of wages, it is a good answer to this defence to show that the refusal to work was caused by the misconduct of the captain, which went to induce the men to incur such forfeitures. *Train v. Bennett*, 3 Car. & P. 3., M. & M. 82., Abb. Sh. 649. (Tenterden.)

228. On a mariner's contract to navigate the ship "to Van Diemen's Land, *vid* Cork and elsewhere and back to London," the ship having sailed to Sydney, from thence to Batavia, and arrived in the Downs; *Held* that the refusal of a mariner to work during a voyage under such contract from the Downs to Rotterdam did not work a forfeiture of wages. *The Countess of Harcourt, Bunn*, 1 Hagg. 248.

*See ante*, No. 179.

##### 5. Neglect of duty.\*

229. By 7 & 8 Vict. c. 112. s. 7. if any

seaman during the period of his service shall, without sufficient cause, neglect or refuse to perform his duty, he shall forfeit out of his wages two days' pay, and for every twenty-four hours' continuance of such conduct six days' pay, but no such forfeiture shall be incurred unless the fact of the seaman's neglect or refusal shall be duly entered in the log-book, the truth of which entry it shall be incumbent on the owner or master in all cases of dispute to substantiate by the evidence of the mate or other credible witness.

230. It is not necessary to prove wilful negligence to bar a claim of a mate for wages. Proof of habitual inattention to the ordinary duties of his station, exposing the ship to danger, is sufficient. *Robinett v. The Exeter*, 2 C. Rob. 263.

231. A chief mate suing for wages in the Court of Admiralty is bound to show that he has discharged the duties of that situation with fidelity to his employers. Amongst the most important of these duties are a due vigilance, care, and attention to preserve the cargo from robbery, but he is not responsible for any embezzlement that may occur, not arising from any neglect of duty on his part. *The Duchess of Kent, Newby*, 1 W. Rob. 285.

232. General neglect of duty, or a neglect of duty in a particular instance leading to a robbery of the cargo, would entail a forfeiture of the wages of a chief mate; but neglect of duty in a particular instance (*viz.* going on shore without leave during the landing of the cargo, and being absent for a long period of time,) unless followed up by consequences injurious to the owners, would not entail such a forfeiture. The onus of proving such injurious consequences rests with the owners, but direct and positive testimony thereon is not necessary; evidence fairly leading to that presumption is sufficient. *Ibid.* 287.

233. In a suit for wages preferred by the mate, the owners claimed to deduct the value of a hogshead of sugar which had fallen overboard while being conveyed from the wharf to the ship's boat, in Jack's Bay, Jamaica, in the absence of the wharfinger, who would have been responsible for the damage had he been present, and it being a rule in Jamaica not to remove goods in the absence of this responsible person. The Court holding that for the interests of commerce it was necessary

\* 56. A seaman is chargeable for the value of articles lost by his inattention and carelessness, and the amount may be deducted from his wages. *Snell*

*et al. v. The Independence*, Gilpin's (AMERICAN) Rep. 89.

to protect the principle of law that the owners of vessels are entitled to deduct the losses occasioned by the negligent conduct of seamen, allowed the deduction claimed, but without costs. *The New Phoenix* (14th Feb. 1893), 2 Chitty's Gen. Prac. 524.

234. In a claim for wages preferred by a chief mate and opposed on the ground of drunkenness, absence without leave during delivery of cargo, neglect of duty thereby, and partial loss of cargo therefrom; the Court pronounced for the wages, holding that there was a failure of proof of drunkenness and of the loss of cargo having been occasioned by such neglect of duty. *The Duchess of Kent, Newby*, 1 W. Rob. 283.

#### 6. Embezzlement.\*

235. If a sailor execute the articles prescribed by 37 Geo. 3. c. 73. and serve accordingly, and during the voyage part of the cargo be plundered, but by whom cannot be ascertained, he does not in consequence of such embezzlement forfeit his wages. *Thompson v. Collins*, 1 N. R. 347., Abb. Sh. 653.

236. And *semble*, that in such a case he is not even liable to a proportionate deduction from his wages, in common with the other sailors, on account of such embezzlement. *Ibid.*

237. An act of embezzling is a reason for withholding a proportionate part of the wages of a mariner, but does not work a forfeiture of the whole. *The Malta, Young*, 2 Hagg. 172.

238. In a claim for wages preferred by the steward, opposed on the ground of a deficiency in the linen, charged as em-

bezzled or lost by the negligence of the steward, *Held* that proof of the loss was not sufficient, but that it must be shown that the articles had been delivered into his custody, and that the deficiency was imputable to him. Wages pronounced for. *The Lady Campbell, Beetham*, *Ibid.* 10.

239. Proof of a bottle of spirits being seen in the mariner's chest, *Held* to be insufficient to sustain a charge of embezzlement working forfeiture of wages. *The Test, Brown* (2), 3 Hagg. 315.

*See antè*, No. 231.

#### 7. Intoxication.†

240. Where it is sought to affect an officer with intemperance, it is material whether the specific acts of drunkenness proved were on shore or on board; for in a mode of life peculiarly exposed to severe peril and exertion, and therefore admitting in seasons of repose something of indulgence and refreshment, that indulgence and refreshment is naturally enough sought in grosser pleasures; and therefore the proof of a single act of intemperance committed in port is no conclusive proof of disability for general maritime employment. *Robinett v. The Exeter*, 2 C. Rob. 261.

241. Slight and occasional intoxication will not enure to a total forfeiture of wages, but *aliter* as to habitual drunkenness. *The New Phoenix, Leothwaite*, 1 Hagg. 198.

242. A single instance of intemperance, particularly when a vessel is at anchor or in port, does not work a forfeiture of wages. Habitual drunkenness must be proved in order to produce such an effect. *The Malta, Young*, 2 Hagg. 168.

243. Occasional acts of intoxication will

\* 57. If the cargo be embezzled or injured by the fraud or negligence of the seamen, the owner has a right to deduct a compensation from the wages of those whose misconduct has produced the injury. (*Molloy*, b. 2. c. 3. s. 9., 2 *Show.* 167., 1 *Ld. Raym.* 650.) But he has no right to make any deduction on that account from the wages of the innocent. *Smith's Merc. Law*, 403.

58. Where an embezzlement has arisen from the fault, fraud, connivance, or negligence of the crew, they are bound to contribute to it in proportion to their wages; where the embezzlement is fixed on an individual, he is solely responsible. Where it is clearly shown to have been made by the crew, but the particular offenders are unknown, and from the circumstance of the case strong presumptions of guilt apply to the whole crew, all are liable; but where no fault, fraud, connivance, or negligence is proved against the crew, and no reasonable presumption is shown against their innocence, the loss

must be borne exclusively by the owner or master. *Speer et al. v. Pearson*, 1 *Mason's (AMERICAN) Rep.* 104.

59. In no case are the innocent part of the crew to contribute for the misdemeanours of the guilty; and in a case of uncertainty the burden of proof of innocence does not rest with the crew, but the guilt of the parties is to be established beyond all reasonable doubt before the contribution can be demanded. *Ibid.*

† 60. Where drunkenness is habitual and gross, so as to induce a general incapacity to perform duty, it is a ground of forfeiture of wages. But where it is only occasional, or leaves much meritorious service behind, it is quite sufficient to recover in damages the amount of the actual or presumed loss resulting from such a violation of the mariner's contract. *Orne v. Townsend*, 4 *Mason's (AMERICAN) Rep.* 541.

Master has same lien - if owner's ship is  
held the owner, liable for payment of share, being  
the whole - *WAGES* - 8 B. & A. 1831 -  
Master has same lien - if owner's ship is

not work a forfeiture of wages. *The Duchess of Kent, Newby*, 1 W. Rob. 285, 286.

244. A claim of wages pronounced for with costs, and objections thereto on the ground of drunkenness overruled. *The New Phoenix, Leathwaite*, 1 Hagg. 198.

245. In a claim for wages preferred by the steward, two acts of drunkenness on the outward voyage, and more frequent acts on the homeward voyage, arising probably from the undue force given by bodily disease to the moderate use of liquors, *held* not to work a forfeiture of wages. *The Lady Campbell, Beetham*, 2 Hagg. 5.

*See antè*, No. 166.

#### 8. Other acts.\*

246. An information laid by the mariner against the vessel for trading in slaves, not being a false and malicious act, cannot work a forfeiture of wages. *The Malta, Young*, 2 Hagg. 172.

247. A seaman's entering the master's cabin in his absence, with three or four others of the crew, and drinking three bottles of wine from a locker left open, and afterwards, though rather tipsy, returning to his work, *Held* to be an irregularity too trivial to incur a forfeiture of wages. *The Gondolier, Rhodes*, 3 Hagg. 191.

248. Claim of a mate for wages, opposed on the ground of drunkenness, insubordination, and negligence, pronounced for, with costs. *Robinett v. The Exeter*, 2 C. Rob. 261.

249. Wages of a mate pronounced for, and charges of drunkenness, embezzlement, and insubordination set up as working a forfeiture thereof, *Held* not to be suffi-

ciently proved. *The Malta, Young*, 2 Hagg. 165.

### IX. OF THE LIEN FOR — †

#### 1. Generally.

250. By 7 & 8 Vict. c. 112. s. 5. no seaman shall, by reason of any agreement, forfeit his lien on the ship.

251. Where a ship was transferred when at sea to a vendee resident in the port where she was registered, and money was paid by the vendee's agents under the sentence of a foreign Court for salvage and wages of the captain and crew, provisions, and sundry ship disbursements, *Held* that the salvage and mariners' wages were a lien on the ship. *Richardson v. Campbell*, 5 B. & A. 203. n.

252. Where there are two creditors, one with a double and the other with a single security, the Court will compel the former so to resort to his double security as to enable the other to be paid. Thus in a case in which there was a bottomry bond on the ship only, which had also been arrested for wages, and was insufficient to meet both claims, the Court would, if the bond were held not to extend by implication of law to the freight, decree payment of the wages therefrom, leaving the whole proceeds of the ship available in satisfaction of the bondholders' claim. *The Mary Ann*, 9 Jur. 95.

*See antè*, No. 114.

#### 2. Of the precedence of — †

253. As long as a plank remains the sailor is entitled against all other persons to the proceeds as a security for his wages.

\* 61. Where a seaman is imprisoned for misbehaviour, he does not forfeit the wages accruing during his confinement, nor, what amounts to the same thing, is he bound to pay those of a person substituted in his place during such confinement. *Wood et al. v. The Nimrod*, Gilpin's (AMERICAN) Rep. 83.; *Snell et al. v. The Independence*, Ibid. 140.

† 62. The lien of mariners for their wages is not like a Common Law lien, and does not require possession of the vessel. *The Mary*, 1 Paine's (AMERICAN) Rep. 180.

63. Seamen have a lien, prior to that of the holder of the bottomry bond, for their wages; but the owners are also personally liable for such wages; and if the bottomry holder is compelled to discharge that lien, he has a resulting right to compensation over against the owners, in the same manner as he would have had if they had previously mortgaged the ship. *The Virgin*, 8 Peters' (AMERICAN) Rep. 538.

64. Seamen's wages on an illegal voyage are not a lien on the vessel. *The Langdon, Cheever*, 2 Mason's (AMERICAN) Rep. 58.

65. In regard to the lien for wages, where the ship has been condemned in a foreign country, there is no difference between the case of a restitution in specie of the ship itself, and restitution in value. The lien attaches to the thing, and to whatever is substituted for it. This is not a peculiar principle of the Admiralty, but it is found in the doctrines of Courts of Common Law and Equity. The holder and the lien holder, whose claims have been wrongfully displaced, may follow the proceeds wherever they can distinctly trace them. *Sheppard et al. v. Taylor et al.*, 5 Peters' (AMERICAN) Rep. 675.

† 66. *Semble*, that a claim for salvage would take precedence of wages earned prior to the salvage services being rendered. *The Selina*, 2 Notes of Cases, 18.



*The Madonna D'Idra, Paphagica*, 1 Dodson, 40.; *The Sydney Cove*, 2 Dodson, 13.

See BOTTOMRY, cap.  
XVIII. sect. 4.

### 3. On the ship.\*

254. By the general Maritime Law the ship is the primary security to the mariner for his wages. *The Golubchick, Bernardos*, 1 W. Rob. 143.

255. The mariner's lien for wages extends over the whole ship, one part as well as another, and no one part more than another. A part separated by a storm is not disengaged by that accident from that lien. If it be recovered, it is recovered as a part of the primitive pledge mortgaged to the mariner. *The Neptune, Clark*, 1 Hagg. 238.

See *antè*, Nos. 133. 148.

### X (a) After sale.†

256. *Quere*, Is the principle that wages are an indelible lien on the ship, one on which the Court is bound to act under all circumstances, and especially with respect to ships purchased by foreigners of British subjects, or of British subjects by foreigners? *The Leander, Murray, formerly Lewis*, Edwards, 37.

257. The sale of a ship, unless under the authority of a competent Court, would not divest the mariner of his interest for wages. *The Sydney Cove*, 2 Dodson, 13.

258. The owner of a British ship cannot by the sale of his ship to a foreigner in a distant part of the world divest the seamen of their wages earned under a contract entered into with himself in this country, and the Court of Admiralty will

enforce the payment of wages so earned. *A fortiori* if the transfer of the ship be merely colourable. *The Batavia, heretofore The Unity*, Ibid. 500.

259. The ship itself is liable for wages and costs. If she has changed owners the present owners must seek their remedy against the former owners. *The Margaret, Nunn*, 3 Hagg. 240.

260. The master of a British vessel having in a foreign port hired four foreign seamen, entered into a written contract with them, that on the ship's arrival in England they should continue on board or be procured a passage back with wages. On the arrival of the vessel in England, wages up to such time were paid them, shortly after which the ship sailed, the master became insolvent, and the men were left destitute in England. A warrant was at their instance decreed against the freight in the hands of the agent, and against the master, both of whom admitted the claims of the seamen. After the four defaults had been granted, the agent (who admitted the receipt of freight, but had paid it away), to avoid further costs, and in expectation that the ship would soon be in England and in his charge as consignee, gave his bill at three months for the debt and costs, whereupon the cause was alleged to be under treaty. The ship having again returned to England consigned to other parties, they admitted the seamen's claim against the ship, but refused to pay costs, and made a tender accordingly. The agent made an affidavit that he accepted the bill as guarantee merely, and was only liable in the event of the men not recovering against the ship. Costs in question pronounced for, and ship held liable for wages and costs,

\* 67. The jurisdiction of the Courts of Common Law in cases of mariners' wages can be exercised only by suit against the person, but the jurisdiction of the Court of Admiralty may be exercised by process against the ship, or the proceeds of a sale thereof remaining in the Court. In this Court alone, therefore, that principle of the Maritime Law which holds the ship in specie to be subject to the claim of wages earned by service in it can be carried into effect. *Abb. Sh.* 655.

68. The lien for seamen's wages attaches to the ship and freight and their proceeds, into whosever hands they may come, and takes priority of all other claims: therefore the shipowners are liable, though they have received certain instalments only of the sums awarded under a treaty of indemnity, where the vessel has been seized abroad; and though a proportion of this has been paid to underwriters who had insured the vessel at the time of the loss. *Brown v. Lall*, 2 Sumner's (AMERICAN) Rep. 443.

† 69. The sale of the vessel by the owner, subsequent to the making of the shipping articles, does not discharge his liability for the wages of a seaman, though the voyage was not terminated, or the wages demanded, previous to the sale. *Bronde et al. v. Haven*, Gilpin's (AMERICAN) Rep. 592.

70. A forbearance by seamen to libel a vessel at a port where they are discharged, before the end of the voyage, does not amount to a waiver of their lien as against a subsequent *bond fide* purchaser. *The Mary*, 1 Paine's (AMERICAN) Rep. 180.

71. A vessel was sold under a decree of the Admiralty at Providence, R. I., at the suit of others of the crew. The libellants had notice of the proceedings, but did not apply for their wages: *Held*, that their lien on the vessel was at an end. *Trump et al. v. The ship Thomas, Bee's* (AMERICAN) Rep. 86.

notwithstanding an asserted change of owners. *Ibid.* 238.

#### 4. On post office packets.

261. A post office packet may be arrested in a suit for wages. *The Lord Hobart, Gamage*, 2 Dodson, 103.

#### 5. On freight.\*

262. Application for prohibition to the Court of Admiralty in a suit there for wages preferred by mariners against the freight of a ship, refused, on the ground that by the Admiralty Law the mariners may arrest the ship, and *seize* the freight. *Neclanham v. Foljamb and Another* (12 Ann.), 6 Vin. Abr. 439.

263. Seamen may arrest the freight as well as the ship for their wages, and if the latter only be in the first instance arrested by them, and it appear that there are bottomry claims thereon, they may afterwards apply to have the freight arrested, and the Court would be bound, *ex debito justitiæ*, to grant such a motion. *The Mary Ann*, 9 Jur. 94.

264. The Court will lean strongly to uphold the mariner's lien upon the freight, against all attempts to invade or evade it. *The Juliana, Ogilvie*, 2 Dodson, 510. 516.

*See post*, No. 265.

#### 6. On cargo.

265. A mariner has no lien for wages on the cargo as cargo; his lien is upon the ship to the last plank, and upon the freight as appurtenant thereto; and so far as the cargo is subject to freight, he may attach it as security for the freight that may be due. *Quære*, whether on the loss of a ship, if any cargo were saved, it could be *held* to represent the freight? *The Lady Durham, Stuart*, 3 Hagg. 200, 201.

266. Against the cargo, *quæd* cargo, the seaman can have no claim for his wages, but *quære* as to his claim against cargo, where freight has been earned, though not paid, and where the owner of the ship is the owner of the cargo, and the ship is lost but the cargo saved. *The Riby Grove, Dean*, 2 Rob. 59.

### X. OF THE LIABILITY OF PARTIES FOR —

#### 1. Generally.

267. The master, the ship, and the owner, are severally liable to a mariner for his wages, and the mariner is entitled to his option as to which he will proceed against. In some respects a proceeding against the master is more convenient. *The Jack Park, Little*, 4 C. Rob. 311., Abb. Sh. 655.

#### 2. Owners.

268. Part-owners may be sued in the Admiralty by the mariners of their vessels for their wages. *Alleson v. March* (1689), 2 Vent. 181.; *Wheeler v. Thompson* (1738), 1 Stra. 707.; *Ragg v. King* (1729), 2 Stra. 858.

269. In a suit for wages, a protest on the ground of non-liability, pending a question in the Court of Chancery as to the ownership of the vessel under an assignment, overruled, and the parties directed to appear absolutely, they having in their answer to a bill in Chancery sworn that they were the owners. *The St. Johan, Havenceyzer*, 1 Hagg. 334.

270. The principle of equity, that he who takes a benefit should bear his share of the burthen attaching to it, *Held* to apply in the case of demands for pilotage and wages against ship and freight, where the property in these was vested in different owners, as the exertions of the pilot and seamen contribute equally to the preservation of ship and freight, but *quære* as to the application of that principle in all cases. *The Dowthorpe, Lofty*, 2 W. Rob. 85.

#### 3. Masters.

271. A suit for wages against the master personally entertained. *The Jack Park, Little*, 4 C. Rob. 308.

272. The master may be sued in the Admiralty by his mariners for their wages. *Baylys v. Grant*, 1 Salk. 33., 12 Mod. 444., 1 Ld. Raym. 632., Holt, 48.; *Anon.*, 2 Show. 86.

273. During the voyage a ship was wrecked, and the captain gave the mariners an order upon the owners for the amount of their wages to the date of the wreck, acknowledging at the same time that he had hired them by the month:

\* 72. The master has a lien on the freight for his necessary disbursements for incidental expenses, and the liabilities which he contracts for those ex-

penses during the voyage, and also for his own wages. *Drinkwater et al. v. The freight, &c. of the Spartan*, 3 (AMERICAN) JUR. 26.

*Held*, that under these circumstances no action for wages could be maintained by the mariners against the captain, at least without proving that they had first made a demand upon the owners. *Forsboorn v. Krugor*, 3 Camp. 197. (Ellenborough.)

274. The owners of a ship let it out to freight, and by the charterparty it was agreed that no freight should be paid to the owners until six days after the ship should return to the port of London and make a full delivery of her lading, but the master might detain the imprest money, and if the ship should be lost in her voyage, the master and owners should not expect any other satisfaction than the imprest money for the freight and demurrage of the ship. The ship was lost, and upon a question who was liable to pay the seamen's wages? it was *held* that the master was liable in the first instance, as having hired them, but that he had his remedy against the owners. *Buck v. Rawlinson*, 1 Bro. P. C. 137.

#### 4. Other parties.

275. In an action by a purser's steward against the purser of a King's ship, to recover wages from him beyond his pay as an able seaman, on an implied contract with him (the purser) for his services as purser's steward; *Held*, that as a person receiving a specific salary from the Crown in respect of his situation could not recover upon an implied contract for a remuneration for his services from the officer under whose immediate authority he acted, and as the purser had no funds allowed him, out of which such services were to be paid, the action could not be supported. *Carter v. Hall*, 2 Stark. 861., Abb. Sh. 617.

276. The captain of a ship-of-war detaining an impressed apprentice after notice, is liable to the master for wages for the service of the apprentice. *Eades v. Vandeput*, 5 East, 39. n., 4 Dougl. 1.; and see *Foster v. Stewart*, 3 M. & S. 191.

277. Even if the captain have knowledge of the fact from the apprentice's assertion merely. *Ibid.*

278. A shipowner assigned 15-16ths of a ship to his creditor, in trust to sell and retain his debts, and afterwards became bankrupt; the ship was afterwards sold. *Held*, that the creditor must bear his pro-

portion of the seamen's wages, and other expenses on account of the ship. *Douglas v. Russell* (1831), 4 Sim. 533.

#### XI. OF THE CALCULATION OF —

279. In fixing a rate of wages at a *quantum meruit*, there having been no specific agreement as to the amount, the Court will be influenced by the conduct of the owner and the length of time during which the seaman may have been kept out of his money. *The Providence, Herd*, 1 Hagg. 393, 394.

*See antè*, Nos. 81. to 84.

#### XII. OF THE ASSIGNMENT OF — \*

280. A seaman assigned his wages as a security for money, and died indebted to other persons, *Held* that the assignment specifically binds the wages, and that the money secured thereby should be paid preferable to all other debts. *Crouch v. Martin*, 2 Vern. 595.

*See post*, No. 288.

#### XIII. OF THE PAYMENT OF — \*

281. By 8 & 9 Vict. c. 116. s. 7. no advance note or wages is to be given or paid to any seaman until six hours after the ship's articles shall have been duly signed, and then only to the seaman himself, unless the same be paid in money, in which case such payment may be made to the seaman himself at any period most convenient after the signing of the ship's articles; and all payments of wages made contrary to this act are to be void, and the amount thereof recoverable as if never paid.

282. By 7 & 8 Vict. c. 112. s. 11. the master or owner of every ship shall pay every seaman his wages, if the ship be employed in coasting, within two days after the termination of the agreement, or at the time of the seaman's discharge, which shall first happen, and if the ship be employed otherwise than coasting, within three days at latest after the delivery of the cargo, or within seven days after the seaman's discharge, which shall first happen; and in case the seaman shall, at the time of his discharge, be entitled to be paid on account a sum equal to one fourth of the balance due to him, and the master or owner shall neglect or refuse to make

\* 73. If a master punish a sailor by imprisonment in a foreign port, he is not permitted to deduct his wages during the time of imprisonment,

nor to charge him with the expense of it. *Dana's Seaman's Manual*, 193.

such payment, he shall, for every such neglect or refusal, forfeit to the seaman the amount of two days' pay (to be recovered as wages) for each day, not exceeding ten days, during which payment shall be so delayed: but nothing in this clause contained shall extend to the cases of ships employed in the southern whale fishery, or on voyages for which seamen, by the terms of their agreement, are wholly compensated by shares in the profits of the adventure.

283. In a suit for seamen's wages application was made to the Court to decree, in addition to the wages ordinarily due, two days' pay for each day not exceeding ten since his dismissal, under the 5 & 6 W. 4. c. 19. s. 11., which enacts that in case of neglect of payment as therein specified, the owner or master shall forfeit and pay to the seaman two days' pay for every day not exceeding ten days during which payment shall without sufficient cause be delayed beyond the period at which such wages are required to be paid, and for the recovery of which forfeiture the seaman shall have the same remedies as for his wages. The Court pronounced for the wages due, and also for the additional wages, as prayed. *The Elizabeth*, 6 Jur. 156.

284. By 7 & 8 Vict. c. 112. s. 49. seamen, when allowed to be left behind abroad, are to be paid their wages there under a penalty of 10*l*.

285. By 4 & 5 W. 4. c. 52. s. 30. all sums of money due for wages to any seaman hired on board any British merchant-ship in the ports of this country, and who shall have died during the voyage, shall, within three months after the ship's return, be paid to the trustees, collector, or other authorized agent for that port of the Corporation for the Relief of Disabled Seamen, for the use of the executor or administrator of the deceased seaman; and in case no claim for the same shall be made by such executors or administrators within one year, then such trustees shall remit the same to the receiver of such corporation in London, for the use of such executors or administrators; and in case no claim for the same shall be made by them on the president and governors of such corporation in London within one year after such transmission thereof, such president and governors may then pay over such wages, without interest, to the deceased's widow,

or to the persons entitled thereto under the statutes for distribution of intestates effects. And masters or collectors neglecting to act as above directed are to forfeit double the amount of such wages. By s. 31. such sums, if not so demanded in three years, shall be forfeited and paid to the use of such president and governors, &c.

286. On motion, at the instance of the master, for warrant of arrest against the proceeds of a ship for wages due to certain seamen who had died on the voyage, and which wages therefore he was, under 4 & 5 W. 4. c. 52., called upon to pay over to the Seamen's Hospital within three months, under a penalty of double the amount, the Court intimating a desire to protect the master, and a doubt whether the consent of the Seamen's Hospital should not first be ascertained, directed the case to stand over, the registrar having suggested that the payment could not be safely made without an appearance for the representative of the owner. *The Dunvegan Castle*, *Howard* (1), 3 Hagg. 329.

287. By 7 & 8 Vict. c. 112. s. 31. whenever any seaman shall die abroad, and not on board a British ship, leaving effects on shore, the British consul shall take charge and dispose thereof, and remit the balance to the president and governors of the Corporation for the Relief of Maimed Seamen, &c., to be by them disposed of according to 4 & 5 W. 4. c. 52. with respect to wages of seamen dying on board merchant ships; and in case any seaman shall die abroad, leaving effects on board ship, or entitled to wages, the master shall deposit the same and the proceeds of such effects with the president and governors aforesaid, to be disposed of by them as directed by the said act with respect to the wages of seamen dying on board ship.

288. By s. 12. every payment of wages under this act to a seaman shall be valid, notwithstanding any bill of sale or assignment of such wages, or any attachment or incumbrance thereon, and no assignment or sale of wages or salvage made prior to the accruing thereof, nor any power of attorney, expressed to be irrevocable, for the receipt of such wages or salvage, shall be valid, and no attachment from any Court shall prevent the payment of wages to any seaman.

289. Wages due to deceased seamen prior to 1 W. 4. c. 25.\* decreed, subsequently

\* By 1 W. 4. c. 25. s. 2. droits of admiralty are, with other hereditary revenues of the Crown, directed to be carried to the credit of the Consoli-

dated Fund, that statute granting certain fixed revenues to the Crown in lieu thereof.

to such act, to be paid out of the proceeds of a derelict which had been condemned as a droit of admiralty. *The Speculator*, Benest, 3 Hagg. 330. n.

290. The Court will not pay much attention to the objection that the action for wages was brought before the legal time for the payment of the wages under the articles had elapsed. *The Test, Brown*, (2), 3 Hagg. 313. 316.

291. Where, by a clause in the ship's articles, the seamen were not to be entitled to their wages until the voyage was ended, and the voyage was to a foreign port, and the master, for no good or legal cause, dismissed a seaman before the ship's arrival at such port, *Held*, that the seaman might immediately maintain an action for his wages. *Sigard v. Roberts*, 3 Esp. 72. (Eldon), Abb. Sh. 175.

292. Where a seaman is restricted by the ship's articles from demanding his wages until the expiration of twenty days after the ship's arrival at her destined port and the delivery of her cargo, *Held*, that although the seaman had commenced his action before the expiration of the twenty days, he might still recover a sum which the captain had admitted to be due to him for wages, and which he had offered to pay him. *White v. Mattison*, 2 Stark. 325. (Ellenborough.)

*See antè*, Nos. 159. to 163.

#### XIV. EVIDENCE IN CAUSES OF —

##### 1. *As to entries in log.*

293. By 7 & 8 Vict. c. 112. s. 7. it is made incumbent on the owner or master to substantiate, in all cases of dispute, by the evidence of the mate or some other credible witness, the entries in the ship's log-book, thereby required in order to secure forfeitures in cases of neglect of duty, absence without leave, &c.

294. In a suit for wages entry of desertion in the log-book, not signed or attested as required by 5 & 6 W. 4. c. 19. s. 9., *Held* to be inadmissible as evidence under that section. *The Two Sisters*, Davison, 2 W. Rob. 144.

*See antè*, No. 184.

#### XV. PRACTICE IN SUITS FOR —

##### 1. *Limitation of suits.\**

295. By 4 Anne, c. 16. s. 17. all suits for seamen's wages in the Admiralty Court shall be commenced within six years after the cause of action shall accrue, and not afterwards.

296. By s. 18. such six years shall be computed after disabilities of infancy, *feme covert*, *non compos*, imprisonment, or absence beyond seas, are expired.

297. By s. 19. if persons against whom any suit for seamen's wages or other actions shall have accrued are beyond seas, the plaintiff may bring his action within six years after their return, as in 21 Jac. 1. c. 16. is directed.

##### 2. *As to production of ship's articles.*

###### (a) *Statutory regulations thereon.*

298. By 7 & 8 Vict. c. 112. s. 5. every copy of an agreement, certified and delivered as directed by this act, shall be received as evidence on behalf of the seaman, of the contents of the agreement, and no seaman shall be required to produce such agreement or copy, or give notice for its production; but in case the agreement shall not be produced and proved, he shall be at liberty to prove the contents thereof, or establish his claim by other evidence, according to the nature of the case.

###### (b) *Cases prior to the statute.*

299. In a suit for wages, an affidavit of the owner to account for the non-production of the ship's articles admitted. *The Lord Hobart*, Gamage, 2 Dodson, 103.

300. To enable a plaintiff to recover under statute 37 Geo. 3. c. 73., the articles of the ship under which the sailor sailed from England, if any, must be given in evidence. *Martin, q. t., v. Greenleaf*, 2 Esp. 729. (Kenyon.)

301. In an action by a seaman to recover wages, the defendant is compellable to produce the ship's articles. *Johnson v. Llewellyn*, 1 Taunt. 386., 6 Esp. 101.

302. The statute 2 Geo. 2. c. 36. requiring

\* 74. Actions in the Courts of Common Law for seamen's wages are limited to the same period of six years, with the same provisos as in the Court of Admiralty (under the stat. 4 Anne, c. 16.), unless they are founded on a contract under seal. If

they be founded on such a contract, the statutable limitation does not apply to them, but after a lapse of twenty years the claims will be presumed to have been satisfied without any proof of payment. Abb. Sh. 663.

articles to be entered into between the masters of ships and the mariners, and providing that the mariners shall not fail, on any suit for wages, from not producing the articles, did not apply in the case of a British seaman entering on board a foreign ship in a British port. *Dickman v. Benson*, 3 Camp. 290. (Ellenborough.)

### 3. As to references to the registrar and merchants.

303. Accounts for wages, payments on account, &c., referred to the registrar to examine and report upon. Wages pronounced for, subject thereto. *The Lady Campbell, Beetham*, 2 Hagg. 14, 15.

304. In a suit for wages, preferred by a mariner and pronounced for with costs, an application of the owner to refer the schedule of deductions from the wages, respecting which the owners and mariner were not agreed, to the registrar, refused. *The Test, Brown* (2), 3 Hagg. 316.

See *antè*, No. 86.

### 4. Miscellanea.

305. In a suit for mariner's wages in the Court of Admiralty, the Judge, at the hearing, rescinded the conclusion of the cause in order to allow a second witness to be produced in support of the mariner's summary petition, and on two subsequent occasions, on affidavits, also rescinded the conclusion of the cause for the same purpose. From the third rescinding of the cause, an appeal was interposed on behalf of the owners to the Delegates, who, however, pronounced against the appeal with costs, and remitted the cause. *Henley & Dudderidge v. Morrison*, 2 Hagg. (Eccl. Suppl.) 147.

306. It is not necessary for a mariner to prove his own discharge, the onus of proof of which is thrown on the other party. *The Baltic Merchant, Smith*, Edwards, 89.

307. In a suit for wages, the defendant having rested his defence *formaliter* on the ground of an asserted consent of the mariner, which was *held* not to bar him, the Court will, nevertheless, take into consideration matters forming a just ground of defence, but which the defendant may have improperly overlooked. *The Elizabeth, Gull*, 2 Dodson, 406.

308. On appeal from magistrates' award in a case of wages, the appellant commences the act on petition. *The Minerva, Dale*, 1 Hagg. 54.

309. On appeal from an award of a magistrate in a suit for wages, objections to the jurisdiction of the magistrate overruled as urged too late: *Held*, that they should have been urged under protest before the magistrate. *Ibid.* 58.

310. In a suit for wages brought by a seaman who deserted from his former vessel, it is a sufficient defence on the part of the owners to allege such desertion and the payment of his wages into Greenwich Hospital, *sec. stat.* in acts of Court. *The Vibilia, Corbet*, 2 Hagg. 228.

311. Motion after the fourth default for consolidation of several actions for wages granted. *The Adventure, Young*, 3 Hagg. 153.

312. In a suit for wages it is not necessary or proper to insert in the summary petition of the mariner ill-treatment by the master. It may be pleaded subsequently, if necessary, and responsively, to a charge of drunkenness. *The New Phoenix, Leathwaite*, 1 Hagg. 198.

313. In an action for wages at suit of A., a seaman, motion on his behalf that B., who had instituted a similar action, which it had been agreed should abide the issue of that brought by A., and who had been examined as a witness in A.'s action, might file his answers as well as A. to a responsive allegation given by the master and principal owner in A.'s action, rejected as irregular. The owner, however, afterwards permitted such answers to be taken as evidence, to prevent a responsive plea. *The Protector, Bragg*, 3 Hagg. 240.

314. On a claim for a balance of wages amounting to 11*l.* 15*s.*, the Court intimated that the sum in dispute was so small that it was very desirable it should be settled out of Court by the counsel on either side, and directed, that if the suit should proceed, the seaman should give not merely his juratory caution, but bail to answer costs. *The Edwin, Robertson*, 3 Hagg. 366.

315. A decree for wages, with costs, to a mariner when deceased, may be renewed to his administrator. *The Prince George, Shaw*, *Ibid.* 382.

316. *Quære*, whether, according to the ordinary practice of the Court of Admiralty, alleged drunkenness of the mariner can be made available as a defence to his claim for wages, by interrogatories to his witnesses, or unless specifically pleaded and put in issue in the cause? *The Duchess of Kent, Newby*, 1 W. Rob. 284, 285.

317. The master had, in pursuance of

the directions of the statute 37 Geo. 3. c. 73., paid to the receiver of the sixpenny duty for Greenwich Hospital the sum of 9*l.* as the full amount of wages due to a deceased seaman. The administratrix of the deceased, contending that more than 9*l.* was due, brought an action against the master, who insisted, that, as he had accounted upon oath according to the directions of the statute, the amount of the sum due could not be questioned in such an action, but he must be sued for the penalty given by the statute. *Held*, that the statute did not deprive the administratrix of her right to sue for all that was justly due beyond the sum paid to the officer. *Amesbury v. Smith* (1813), 1 N. R. 299.

*See ante*, No. 263.

#### XVI. COSTS IN CAUSES OF —

318. In suits for wages, the Court on pronouncing for the claim must give costs, otherwise the judgment of the Court will have no effect. *The Blake, Hadden*, 1 W. Rob. 88.

319. In a suit by a mariner for wages, which were paid to his proctor the day after the discharge of the cargo was completed, an objection by the owners to payment of costs, on the ground that by the ship's articles it was stipulated that no seaman should be entitled to his wages until the discharge of the cargo (unless after a certain time not exceeded in this case), overruled, and costs pronounced for, the owners having, on paying the rest of the crew in full, offered to the mariner only a sum in full, and refused the whole amount of his wages. *The Minstrel, Arkcoll*, 2 Hagg. 40.

320. In a suit for wages paid after the

arrest of the ship, a protest of the owners against payment of costs, on the ground that the men had quitted the ship in direct disobedience of the master's orders, and that the wages were not due at the time of the arrest, overruled, and the costs of the mariners allowed, on the ground that the payment of the wages was an admission of the justice of the demand. *The Thomas Handford, Sawyer*, *Ibid.* 41. n.

321. A suit for wages, the owners having pleaded the mariner's desertion from his former vessel, and their payment of his wages into Greenwich Hospital *sec. stat.* 4 Geo. 4. c. 25., decreed to be dismissed, but without costs, as not being usually given in causes of wages. *The Vibilia, Corbet*, *Ibid.* 228.

322. In a suit for wages brought by mariners, in which the owner's counsel admitted their grounds of defence to be untenable, but objected to the mariners' costs being allowed, on the ground that they should have sought their remedy by application to a magistrate, and were therefore disentitled under the 16th section of 5 & 6 W. 4. c. 19. to their costs in the Court of Admiralty, the wages being under 20*l.*, *Held*, that though there was no doubt or difficulty whatever in the question raised as to the construction of the articles, yet, the mariners having been previously summoned before the magistrates on the construction of them, it did not lie in the mouth of the owners, who had themselves adopted measures against the mariners, to say that there was no doubt as to the construction of articles on which they themselves had raised a question. Wages and costs pronounced for accordingly. *The King William, Smith*, 8 Jur. 87., 2 W. Rob. 231., 3 Notes of Cases, 14.

#### WAR.

1. War may exist between two states without a declaration of war on either side. A unilateral declaration of war is proof of the existence of a war between both countries. *The Eliza Ann and others*, 1 Dodson, 247.

2. A war between foreign countries must be proved, but the Courts of this country take judicial notice of a war in which this country is engaged. *Dolder v. Huntingfield* (Lord), 11 Ves. jun. 292.

3. Hostilities against the Dutch, which were declared 15th September, 1795, ap-

plied retrospectively to property taken during the doubtful state of things that preceded the declaration. Condemnation. *The Herstelder, De Koe*, 1 C. Rob. 113.

4. The intervention of hostilities puts the property of the enemy in such a situation that confiscation may ensue; but unless some step is taken for that purpose, unless there is some legal declaration of the forfeiture to the Crown, the right of the owner revives. Right of neutral claimant, under a decree of costs and damages suspended by the breaking out of hostilities,

during which no proceedings for the forfeiture thereof were taken, *Held* to revive on the cessation of hostilities and the country of the claimant becoming an ally.

*The Nostra Senora De Los Dolores, Morales*, Edwards, 60.

5. False colours are a usual stratagem of war. *La Esperanza*, 1 Hagg. 90.

## WITNESSES.

## I. OF THE COMPETENCY OF —, 504.

1. *Generally*, 504.
2. *Necessary witnesses*, 505.
3. *When objections may be taken to —*, 506.

## II. OF THE CREDIBILITY OF —, 506.

1. *Generally*, 506.
2. *Exceptions to —*, 506.

## III. OF THE PRODUCTION OF —, 506.

1. *Generally*, 506.
2. *Of the allowance of time for —*, 507.
3. *What witnesses may make affirmations in lieu of oaths*, 507.

## IV. OF THE EXAMINATION OF —, 507.

1. *Generally*, 507.
2. *De bene esse*, 507.
3. *On interrogatories*, 507.

## V. OF THE DUTIES OF —, 508.

1. *To answer questions required of them*, 508.
2. *To produce papers in their possession relative to the suit*, 508.

## VI. OF THE RE-EXAMINATION OF —, 509.

## VII. MISCELLANEA, 509.

VIII. OF THE ALLOWANCE OF EXPENSES OF —  
see COSTS.  
See EVIDENCE.

## I. OF THE COMPETENCY OF —

1. *Generally*.\*

1. By 3 & 4 *W. 4. c. 42. s. 26.*† if any witness be objected to as incompetent, on the ground that the verdict or judgment in the action on which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined, but in that case a verdict or judgment in that action in favour of the party on whose behalf he shall have been examined shall not be admissible in evidence for him or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined be admissible in evidence against him or any one claiming under him.

2. *Sect. 27.*† directs that the name of every witness so objected to shall at the trial be indorsed on the record or document on which the trial shall be had, together with the name of the party on whose behalf he shall be examined, by

some officer of the Court, at the request of either party, and shall be afterwards entered on the record of the judgment, and such indorsement or entry shall be sufficient evidence that such witness was examined in any subsequent proceeding in which the verdict or judgment shall be offered in evidence.

3. By 3 & 4 *Vict. c. 65. s. 10.* the provisions of the stat. 3 & 4 *W. 4. c. 42.*, with respect to the admissibility of evidence of interested witnesses, are extended to any suit pending in the High Court of Admiralty, and the entry by such act directed to be made on the record shall be made on the document containing the sentence of the Court of Admiralty, and shall have the like effect as such entry on the record.

4. In an action of assumpsit on a charter-party against one of two part-owners who made it, *Held* that the other part-owner was, since the 3 & 4 *W. 4. c. 42. s. 36.*, and *semble* prior thereto, a competent witness for the other part-owner, and *semble* was so before the statute. *Atkinson v. Foster*,

\* 1. See on this head *Gresley's Law of Evidence* (2d edit. by Calvert), part ii. cap. 3.

† 2. These sections have been held to apply ex-

clusively to Courts of Law. *Oliver v. Latham*, 1 Phillips (C. H.), 408.



1 Man. Gr. & Sc. 713., 14 Law J. N. S. 237.

5. By 6 & 7 Vict. c. 85. s. 1. no person offered as a witness shall hereafter be excluded by reason of incapacity, from crime, or interest, from giving evidence, either in person or by deposition, in any suit or in any Court, notwithstanding such person may have an interest in the matter in question, or in the event of the suit in which he is offered as a witness, or may have been previously convicted of any crime or offence; but this act shall not make any party to any suit individually named in the record, or any person in whose immediate and individual behalf any action may be wholly or in part brought or defended, or the husband or wife of such person, a competent witness in any such suit.\*

6. One of several defendants in an action on a joint-contract, who had suffered judgment to go by default, *Held* an admissible witness for the plaintiff since 6 & 7 Vict. c. 85. *Droper v. Clarke*, 1 Car. & K. (N.P.) 569.

7. A partner, against whom a judgment has been previously obtained in respect of a partnership debt, *Held* a competent witness to prove the debt in an action against his co-partner, there being no plea in abatement or of the former judgment. *Lupper v. Newark*, 2 Car. & K. 24.

8. A consul of a neutral state resident in the enemy's country is not, because he is thereby subject to all the disabilities of an enemy merchant, as to the power of

becoming a claimant in the Court of Admiralty, necessarily disabled on that account from introducing evidence before the Court, for the alien enemy is not generally disabled as a witness, and the cases of exception are few. *The Falcon, Atkins*, 6 C. Rob. 197.

9. The children of the parties to a suit are competent witnesses for or against either of them, and the Court cannot therefore prevent their production, which, however, ought to be avoided. *Lockwood v. Lockwood*, 2 Curteis, 282.

## 2. Necessary witnesses.†

10. Persons interested may be examined as witnesses *ex necessitate rei*. The Court always endeavours to exclude biased witnesses, but it must sometimes admit them. *The Pitt*, 2 Hagg. 151. n.; *The Celt, Taylor*, 3 Hagg. 323.

11. In a cause of collision an objection to the competency of certain of the crew of the vessel proceeded against as witnesses, on the ground that they were sharers in the profits and losses of the vessel, and would not swear they were disinterested in the result of the suit, overruled, and such persons admitted as witnesses, but on the ground solely of necessity justifying such an exception from the general rule. *The Catherine of Dover, Davison*, 2 Hagg. 145.

12. In a cause of salvage two persons, plaintiffs under the general description of "crew of the ship," and who had given in their answers, dismissed on signing

\* 3. The cases as to the disqualification of witnesses on the ground of interest, which occurred in the Court of Admiralty prior to the above statutes, are *L'Amitié, Villeneuve*, and *San Jose*, 6 C. Rob. 269.; *The Galen, Rogers*, 2 Dodson, 21.; *The Catherine of Dover, Davison*, 2 Hagg. 145.; *Robinet v. The Exeter*, 2 C. Rob. 261.; *The Harvey, Peuch*, 2 Hagg. 83. n.

4. As to what criminal convictions would and would not, prior to the above statutes, have disqualified a person from being a witness, see *The Ville de Varsovie*, 2 Dodson, 185.

5. A conviction for perjury, prior to the above statute, disqualified a witness. *Trevanion v. Trevanion*, 1 Curteis, 427.

6. Prior to this statute the master was held to be a competent witness in a suit for wages brought against the ship. *The Lady Ann, Wardell, Edwards*, 235.

7. But it was considered doubtful whether the owner was not, in a suit for wages, an incompetent witness against the mariner, nor within the denomination of a necessary witness, not having been on board the vessel during the voyage. *The Two Sisters, Davison*, 2 W. Rob. 140.

8. Prior to the above statutes, a party responsible to the proctor for the costs of the party producing him was held to be an incompetent witness. *Handley and Jones v. Edwards*, 1 Curteis, 722. 743.; *Goodrich v. Jones*, 2 Curteis, 630.; but see *Clark v. Carter*, 4 Moore, 211.; *Allen v. M'Pherson*, 2 Curteis, 515.

† 9. In a case of damage, the evidence of the master and part-owner of the vessel damaged, having been objected to on the ground of his being a part-owner and party to the record, admitted on the ground of his being a necessary witness, other evidence of the facts deposed to by him not being procurable. *Londonderry High Court of Admiralty of Ireland*, 4 Notes of Cases, supplement, xxxv.; *Decision affirmed on Appeal to the High Court of Delegates, Ireland*, Ibid. xliii.

10. Salvors are, *ex necessitate*, admitted as witnesses to all facts which are deemed peculiarly or exclusively within their knowledge; to other facts they are incompetent. *The Henry Ewbank and cargo*, 1 Sumner's (AMERICAN) Rep. 400.

releases, for the purpose of being examined as witnesses, they being necessary witnesses. *The Pitt*, 2 Hagg. 149. n.

13. In a cause of salvage the evidence of certain of the salvors, parties to the suit, admitted on the ground of their being the only witnesses. *The Sara Barnardina*, Ibid. 151.

### 3. When objections may be taken to —

14. The objection to the competency of a witness may be taken at any period, and not merely on the *voir dire*. *Jacobs v. Laybourn*, 3 Dowl. N. S. (P. C.) 352., 11 Mees. & W. (Ex.) 685.

## II. OF THE CREDIBILITY OF —

### 1. Generally.

15. Witnesses to whose general character there is no exception are not to be rejected on conjectures or suspicions. *Robins v. Sir Charles Wolseley, Bart.*, 2 Lee, 421.

16. The evidence of a witness, whose moral character in a particular transaction has been successfully attacked, is not to be swept out of the case, though he is not a witness *omni exceptioni major*, but is to a certain degree tainted. *Robson v. Roche*, 2 Add. 67.

17. The tone and character of depositions are often better criteria for judging of the credit due to witnesses than minute variations between witness and witness. *Constable and Bailey v. Tufnell and Mason*, 4 Hagg. 507.

18. A biassed witness is to be distrusted in matters of opinion, but to be credited in matters of fact, the degree of credit being in proportion to the probability of the transaction, the absence or extent of contradiction of the witness, and the tone of his evidence. *Lockwood v. Lockwood*, 2 Curteis, 209.

19. The credit of witnesses is to be tested by reference to their occupations in life as well as to their statements. *The Towan*, 8 Jur. 221

20. Evidence of mere releasing witnesses only cannot be relied upon to prove a fundamental fact in a cause. *La Belle Coquette, Andrieux*, 1 Dodson, 19.

21. It is contrary to the usual practice of the Court in cases of collision to bind the witnesses down to precise words, more especially as regards distances at night, which it is impossible to set forth with

any certainty or precision. *The Shannon, Higginson*, 1 W. Rob. 468.

22. A subscribing witness who contradicts his own act of attestation may be a good witness to support another subscribing witness in other circumstances. *Broome v. Ellis*, 2 Lee, 525.

### 2. Exceptions to —

23. Exception to the general character of a witness must be taken, if at all, before publication. *Cunnington v. Coxe*, Prerog. 28th June, 1781; *Evans v. Evans*, 1 Hagg. (Cons.) 98., and *Bailey v. Bradburn*, and *Raybold v. Raybold*, therein cited.

24. After publication an article in exception to the general character of a witness can be admitted only as introductory, and, being merely introductory, cannot be examined upon. *Evans v. Evans*, 1 Hagg. C. R. 98.

25. All objections to the character and credit of a witness must be taken before publication. *Trevanion v. Trevanion*, 1 Curteis, 489.

26. After publication the evidence of an attesting witness may be excepted to by the party who produces him. *Mynn v. Robinson and others*, 2 Hagg. 169.

See ALLEGATIONS, cap. II.

## III. OF THE PRODUCTION OF —

### 1. Generally.

27. By 3 & 4 Vict. c. 65. s. 9. the attendance of witnesses may be compelled by the Judge of the Court of Admiralty, or by Commissioners appointed in pursuance of that act, by process in the form as near as may be of a *subpœna ad testificandum*; and every person disobeying such process shall be considered in contempt of the Court, and punished accordingly.

28. A party who has once prayed publication, though stopped by an asserted allegation, is not at liberty to produce further witnesses upon his plea as a matter of course, nor without special ground laid and by leave of the Court, in the event of the asserted allegation not being actually filed. *Bruce v. Burke*, 2 Add. 404.

29. The Court will not depart from its regular practice by directing a list of witnesses to be delivered some time anterior to their production to the other party, residing voluntarily in France. *Morse v. Morse*, 2 Hagg. (Eccl.) 609.

## 2. Of the allowance of time for — \*

30. A cause was delayed till the return of a material witness from beyond the seas. *Martin v. Robinson*, 2 Lee, 397.

31. An application to postpone the hearing of a cause until the return of a person to this country, there having been abundance of time for the person to have given his evidence before he left, refused. *The Blendenhall, Barr*, 1 Dodson, 417.

32. Time having been frequently prayed by the defendant to examine, in a cause of personal damage, a witness who had afterwards been suffered to leave the country without being examined, the Court, it being uncertain when he would return, refused to grant any further time, and closed the case. *The Enchantress, Killock*, 1 Hagg. 395.

## 3. What witnesses may make affirmations in lieu of oaths.

33. By 9 Geo. 4. c. 32. and 3 & 4 W. 4. c. 49. Quakers or Moravians may make a solemn affirmation or declaration in lieu of taking oath.

34. By 3 & 4 W. 4. c. 82. that privilege is extended to separatists.

35. And by 1 & 2 Vict. c. 77. further extended to any person who shall have been a Quaker or Moravian.

## IV. OF THE EXAMINATION OF —

### 1. Generally.

36. By 3 & 4 Vict. c. 65. ss. 7. and 8. evidence may be taken in the High Court of Admiralty *viva voce*, and either before or after examination by deposition or before a commissioner, and the Court may issue commissions, under which evidence may also be taken *viva voce*, in manner and form and by the parties therein directed; and by the 12th section the costs of such commissions are directed to be taxed and enforced like other costs in the Court of Admiralty.

37. Witnesses are to be examined se-

cretly by the Judge in the presence of a notary public. It is to be observed, however, that the secrecy enjoined by the Civil and Canon Laws is varied by the local regulations of different countries; it is not to be interpreted exactly the same in any one country as in another. In this country it is not the practice for the Judge in person to take the examination of the witnesses; that duty is confided to an examiner, who examines them secretly. *Herbert v. Herbert*, 3 Phill. 36.

38. The practice for the proctors on each side to prepare a statement of what each witness can say, and hand it to the examiner to examine by, is very irregular and dangerous. If a case depend on special facts, those facts should be specially pleaded; the opposite party may then object to them if irrelevant, and the witnesses can be cross-examined to them. *Burnell v. Jenkins*, 3 Phill. 394.

### 2. De bene esse.

39. The examination of a witness *de bene esse* is conditional only, and the witness must be examined afterwards, if capable. *Weguelin v. Weguelin*, 2 Curteis, 263.

40. The evidence of a witness examined *de bene esse*, before the admission of the libel, by reason of ill health, *Held* not admissible, if the witness at the hearing of the cause is capable of being examined, but afterwards admitted on an affidavit of his being too ill to undergo another examination without danger. *Ibid*.

### 3. On interrogatories.†

41. A witness was examined in chief under a commission, but was prevented by illness from being examined on interrogatories before the close of the commission. An application was subsequently made on behalf of the ministrant, for her reproduction to undergo cross-examination, and at the expense of the producent, but opposed by the producent, so far as regarded the expense of the reproduction being borne

\* 11. An application of a party after the admission of, and pending the term probatory on, a responsive plea of the adverse party, to be allowed to examine a witness by requisition abroad (in India), who though vouched had not been examined in the first instance on his allegation, granted, the responsive allegation directly contradicting averments in the allegation to which the

witness was vouched. *Fraser v. Fraser*, 4 Notes of Cases, 157.

† 12. Where a witness, having been examined in chief refused to be examined on interrogatories, the proper party to take out a monition against him to undergo cross-examination is the party desiring to cross-examine him, not the party producing him. *Ibid*. 319.

by him. The Court granted the application. *Winford (Lady Brokes) v. Hellier*, 1 Lee, 274.

42. Where the interrogatories had not been delivered to the examiner by the adverse proctor within twenty-four hours after the production of a witness, who was accordingly repeated to his deposition in chief, and refused to remain to undergo cross-examination, the Court held that the witness had not, under all the circumstances, a right to be dismissed, but that further time ought to have been allowed for the preparation of the interrogatories, and intimated that it would grant a monition against the witness to re-attend and undergo his cross-examination, and would condemn the producent in the costs of such reproduction, unless a satisfactory affidavit in explanation of his sudden departure was brought in. *Ingram v. Wyatt*, 1 Hagg. 94.

43. The proctor of the producent having stated that the residence of the witness could not be discovered, the Court further intimated, that unless the witness were reproduced it should direct his deposition to be sealed up in the registry and not used at the hearing. On a subsequent application to the Court on behalf of the producent, supported by affidavits in explanation of the witness's abrupt departure, and of the difficulty of tracing his residence, the Court directed publication to pass on a certain day, intimating that if the witness did not attend in the meantime to undergo his cross-examination, it would then decide whether or not the deposition should be read, and that, if received, the Court being then in possession of all the circumstances, could form a fair estimate of the degree of credit and weight to which his evidence was entitled. *Ibid.* 95. 100.

44. When interrogatories are put into the hands of the examiner, without any notice being given of an intention to administer further interrogatories, the examiner is not bound to detain the witness for the usual twenty-four hours after his examination (*quere* production). An application that a witness, who had been dismissed by the examiner on the completion of his examination on the first set of interrogatories, might be reproduced to be examined to additional interrogatories, on the ground that the additional interrogatories had been tendered to the examiner before the expiration of the twenty-four hours, refused, the Court leaving it to the party applying to bring the witness up at his own expense, if he wished to examine him on

such further interrogatories. *The Gipsy*, 1 W. Rob. 370.

45. An application to be allowed to administer further interrogatories to two witnesses who had been examined, cross-examined, repeated and dismissed, supported by an affidavit of the party's solicitor, that the facts to be interrogated to were material, and had only recently come to his knowledge, rejected; the Court remarking on the novelty of the application, and the danger of establishing such a precedent, and intimating that the affidavit should have been made by the proctor, who is *dominus litis*, and conversant with the practice of the Court and of the circumstances which should have weight in such an application. *Evans v. Knight and Moore*, 3 Phill. 423.

#### V. OF THE DUTIES OF —

##### 1. To answer questions required of them.

46. By 46 Geo. 3. c. 37. a witness cannot refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature, on the sole ground that his answer may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit either at the instance of his Majesty or of any other person.

47. A witness is compellable to answer explicitly as to whether he is or is not responsible in some way for the party's expenses in whose behalf he is examined. *Hudson v. Beauchamp*, 1 Add. 352.

##### 2. To produce papers in their possession relative to the suit.

48. By 3 & 4 Vict. c. 65. s. 9. the production of documents may be compelled by the Judge of the Court of Admiralty or by Commissioners appointed in pursuance of that act, by process in the form as near as may be of a *subpœna duces tecum*; and every person disobeying such process shall be considered in contempt of the Court, and punished accordingly.

49. A witness upon cross-examination is compellable, if required by the ministrant, to produce all written communications addressed to him, the witness, by the solicitor or other agent of the producent, relative to his examination as a witness in the cause. *Atkinson v. Atkinson*, 2 Add. 468.

## VI. OF THE RE-EXAMINATION OF—

50. A legatee having consented to release his interest in order that he might be examined as a witness, a release was executed and exhibited accordingly on his being sworn, but the specific legacies were through inadvertence omitted to be mentioned in the release. On application to the Court the witness was allowed to exhibit another release, and to be repeated to his deposition. *Firth v. Finch*, 1 Lee, 437.

51. A legatee, whose legacy has been paid, having been examined without releasing, allowed to be reproduced on his and the executor's giving mutual releases, and on the latter depositing in the registry, to abide the issue of the cause, a sum sufficient to cover the legacy. *Cooper v. Derriennic and others*, 1 Hagg. (Eccl.) 482.

52. After publication the Court will not allow witnesses to be re-examined in the ordinary mode, on a suggestion that the examiner, from a misconception of the plea, has improperly rejected evidence, but if essential to justice it may direct a *viva voce* examination in open Court. *Ingram v. Wyatt*, *Ibid.* 100.

53. A witness who had been repeated and dismissed two years before, *Held* not entitled under the circumstances to be examined at the end of that time upon an article of the plea to which she had not been designed or examined at the time of her first production as a witness. *Wilkinson v. Dalton*, 1 Add. 339.

54. Motion before publication, that a witness interested by reason of his liability to the proctor for his costs, and who had been examined and repeated, might be reproduced and re-examined, a release of his liability being tendered, granted. *Keed v. Everard*, 3 Curteis, 337.

55. No general rule exists that a witness who is interested at the time of his examination cannot be re-examined after a release of his interest, but on the other hand, as a general rule, such re-examinations are objectionable. In granting or withholding such leave the Court will be guided by the particular circumstances of each case, and the nature of the interest of the witness. *Clark v. Carter*, 4 Moore, 207.

56. A subscribing witness produced by the executor having been examined upon an allegation to prove the will in answer to interrogatories, admitted that he was the solicitor of the executor, that he had employed the proctor in the suit, and that in

the event of the executor being unable to pay the costs, he himself would be liable to the proctor for them. After publication had passed, and the cause had been assigned for hearing, the Judge of the Prerogative Court, on motion, rescinded the conclusion of the cause, and granted leave to the procurent (the executor) to re-examine the witness after a release of his liability. Decision affirmed on appeal, with costs. *Ibid.*

57. An application to rescind the conclusion of the cause for the purpose of allowing a witness incompetent by reason of his liability for costs to be released, re-sworn and re-examined, granted, the original deposition being directed to remain in the registry. The Court, however, intimated that it would not in future make such an order after publication. *Goodrich v. Jones*, 2 Curteis, 633. n.

58. Motion after publication of the evidence to rescind the conclusion of a cause for the purpose of releasing and re-examining the solicitor who drew the will propounded, and who upon his cross-examination as a witness in support of the will had admitted that he retained the proctor in the cause and was responsible to him for the costs, rejected, though supported by an affidavit of the witness that he had not seen the depositions. *Rendall v. Rendall*, 3 Curteis, 119.

## VII. MISCELLANEA.

59. A witness not appearing to a compulsory on the day of the return of the compulsory personally served, will be pronounced contumacious. *Wyllie v. Mott and French*, 1 Hagg. (Eccl.) 33.

60. Where the witness refreshes his memory by referring to a book, it must be produced. *Heward v. Canfield*, 5 Dowl. P. C. 417.

61. If the evidence of witnesses be so taken that an indictment for perjury will not lie against them, their evidence is inadmissible. *O. I. p. by Woods v. Woods*, 2 Curteis, 527.

62. The evidence of witnesses purporting to have been examined upon articles given by A., such articles having been given by B., rejected as inadmissible. *Ibid.*

63. Under suspicious circumstances, the deposition of a witness, not cross-examined, may be sealed up; but on a subsequent satisfactory explanation, may be delivered out, subject to all objections at the hearing. *Ingram v. Wyatt*, 1 Hagg. (Eccl.) 96.

## WRECK.

- I. WHAT IS — ET CONTRA, 510.
- II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY OVER —, 512.
- III. OF THE SEIZURE AND CUSTODY THEREOF, AND THE MODE OF DEALING THEREWITH, 512.
1. *Statutory regulations thereon*, 512.
- IV. OF THE RIGHT TO —, 514.
1. *Of the Crown and its grantees*, 514.

- (a) *Of lords of manors*, 515.
2. *Of the Lord High Admiral*, 515.
3. *Of former owners*, 515.
4. *Of finders of* —, 516.
5. *Of the proof of* —, 516.
- V. OF THE RESPONSIBILITY OF PARTIES FOR DAMAGE TO —, 516.
- VI. MISCELLANEA, 517.

## I. WHAT IS — ET CONTRA.\*

1. By 3 *Ed. 1. c. 4.* where a man, a dog, or a cat escape quick out of the ship, such ship, or barge, or any thing in them, shall not be adjudged wreck, but the goods shall be saved and kept by view of the sheriff, coroner, or the King's bailiff, and delivered into the hands of such as are of

the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished within his keeping, within a year and a day, they shall be restored to him without delay, and if not, they shall remain to the King or to such others to whom the wreck belongeth.†

\* 1. Wreck, deriving its name from the Saxon *pnæc*, signifying outcast or abandoned; in Norman French, *varech*; in Latin, *wreckum*, or *warectum*, or *ejectus maris*, may be divided into two kinds; — 1. Wreck cast upon land, which is wreck properly so called, or wreck at Common Law; 2. wreck found in the sea, which strictly speaking is improperly called wreck, not constituting wreck at Common Law, but falling under the cognisance of the Admiralty. Wreck found in the sea may be subdivided into wreck at sea, flotsam, jetsam, lagan, and derelict. *Palmer on Wreck*, 2.

2. Nothing shall be called wreck but such goods only as are cast or left upon the land by the sea: *quæ naufragio ad terram appellantur*, 5 *Rep.* 106. a.

3. Wreck at sea is taken to signify a vessel at sea totally disabled by wind and waves, distinguished from flotsam as not a fragment or part of a vessel, and from derelict as not abandoned. 2 *Brown's Civil Law*, 49., *Palmer on Wreck*, 2.

4. Wreck at Common Law includes vessels or parts of vessels, or goods cast by the sea upon land within the body of some county, and there left, not continuing in the possession of the owner, his agents, or mariners. *Ibid.*

5. While still in the sea, even when floating between high and low water mark, such things were not regarded by the Common Law, but were under the jurisdiction of the Admiralty; cast upon the beach, though within the same limits, they came under the cognisance of the Common Law. *Ibid.*

6. Flotsam, according to Lord Coke, is when a ship sinks or otherwise perishes, and the goods float on the sea. 5 *Rep.* 106. Perhaps all fragments of a vessel or goods found floating on the sea and not reclaimed would come under this denomination. *Palmer on Wreck*, 3.

7. Jetsam is when goods are cast out of a ship

to lighten her when in danger of sinking, and afterwards the ship perishes. 5 *Rep.* 106., *Palmer on Wreck*, 3. Perhaps it includes all goods so cast out sinking and remaining under water. 1 *Comm.* 293.

8. Ligan, lagan, or lagon, according to Lord Coke, who derives it a *ligando*, is when heavy goods are, to lighten the ship, cast out and sunk in the sea tied to a buoy or cork, or something that will not sink, in order that they may be found again and recovered. *Palmer on Wreck*, 3., 5 *Rep.* 106., 1 *Black. Comm.* 292. It seems rather derived from the Saxon *Liggan*, to lie, signifying all goods so laid or sunk in the sea. *Palmer on Wreck*, 3.

9. In Scotland, under a law of Alexander II. (c. 25.), corresponding to the English statute (3 *Ed. 1. c. 4.*), when any creature escapes alive from a wrecked vessel, the goods cast away are not accounted wreck, but are to be preserved by the sheriff for those who within a year shall prove their property therein, otherwise escheating to the Crown. The admiral is considered the King's donatory of wreck where no special right is shown in another. The prior owners may reclaim wrecked goods on proving their title and paying salvage, though no creature escape alive, and, according to a decision of the year 1725, notwithstanding the year has elapsed. *Palmer on Wreck*, 49. The 9 & 10 *Vict. c. 99.* is declared in s. 50. not to extend to Scotland.

9. Much valuable information with regard to the law of Scotland upon the subject of wreck as connected with royal and manorial privileges, may be found in the printed papers of the case of *M'Donall v. M'Donall*, House of Lords, 1825.

† 10. This statute being but declaratory of the Common Law, these three instances are put but for examples. 2 *Inst.* 167, 168.

11. Although the statute only speaks of wreck, yet it refers also to flotsam, jetsam, and lagan. 2 *Inst.* 167, 22 *Via. Abr.* 539.

2. *Wreckum maris*, or wreck of the sea, is in legal understanding applied to such goods as, after shipwreck at sea, are by the sea cast upon the land. *Sir R. Constable's Case* (1369), 5 Rep. 106., 2 Inst. 167.

3. Neither flotsam, jetsam, nor lagan are called wreck of the sea so long as they remain in or upon the sea; but if any of them are driven to the land by the sea, they shall then be called wreck; so that flotsam, jetsam, and lagan pass by the grant of wreck. *Ibid.*; but see 5 Co. 107.

4. Goods cast into the sea to disburthen a ship in a storm, and never intended for merchandise, are wreck when cast on the shore, without any shipwreck. *Shepherd v. Gosnold* (1671), Vaugh. 168.

5. Wrecks of the sea or shipwrecks are *bona waviata*, and when the sea has brought them to land they are within the land jurisdiction; but to constitute a legal wreck the goods must come to land. If they continue at sea they are jetsam, flotsam, or lagan. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 276. 292.

6. *Wreckum maris* is not such in legal acceptance till it comes ashore, until within the land jurisdiction, while at sea it is flotsam, jetsam, or lagan. Above high water mark it belongs to the lord of the manor, but below low water mark he can have no claim. Between high and low water marks it is *divisum impertium*; when the tide covers this space it is sea; when it recedes it is land, and within the jurisdiction of the manor. If the article be floating, it belongs to the sea, and is not *wreckum maris*, but flotsam. If it become fixed to the land, though there be some tide round it, it may be considered as *wreckum maris*; but if it have merely touched the ground, and be again floating about, its character will depend upon its state when seized. *The King v. Two Casks of Tallow*, 3 Hagg. 298.

7. Claim of a lord of a manor against the King in his office of Admiralty to certain casks of brandy picked up on the coast, founded on certain ancient grants from the Crown of the castle and manor of Corfe, its rights and privileges, wreck of the sea, &c. to the ancestor of the claimant and his heirs, privileged thereunder to exercise the office of admiral in those parts, pronounced against, so far as the same extended to an asserted jurisdiction of three miles from low water mark on the high sea, or to things flotsam, jetsam, or lagan thereon; such grants being *held* to confer

immunities to the extent of the usual land jurisdiction only, that is to low water mark at low water. Of the fifty-nine casks claimed (though forty-nine only were proceeded against), six picked up on the high sea upwards of three miles from low water mark decreed to be droits of Admiralty; thirty-eight picked up outside low water mark, but within three miles thereof, similarly decreed to be droits; five picked up afloat between high and low water marks, but never having touched the ground, and not having therefore become wreck of the sea, similarly decreed to be droits; three picked up aground, the tide being out, between high and low water mark, decreed to the claimant as wreck of the sea; five picked up, having taken the ground between high and low water mark, though still moved by the waves, the sea at one time surrounding them and at another leaving them dry, *held* as not on the high sea, but as wreck of the sea, and decreed to the claimant; one picked up afloat, though the land underneath was dry at low water, even in neap tides, decreed to be droits; one picked up aground, decreed to the claimant. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 257.

8. Claim of a lord of a manor to two casks of tallow picked up on the coast, pronounced against, such casks being *held*, having only touched the ground and being afloat, though between high and low water mark, to be flotsam and not *wreckum maris*, and to belong therefore to the King in his office of Admiralty as droits. Claimant's costs allowed out of the droits. *The King v. Two Casks of Tallow*, *Ibid.* 294.

9. Things which have once touched the ground, though afterwards afloat, do not thereby necessarily become the property of the lord of the manor. Things having become fixed on the shore, and afterwards the sea leaving them and then returning, *Quære*, *wreckum maris* or droits. *Ibid.* 299.

10. Casks picked up, having taken the ground between high and low water mark, though still moved by the waves, the sea at one time surrounding them and at another leaving them dry, *Held* to be wreck of the sea. *The King v. Forty-nine Casks of Brandy*, *Ibid.* 292.

11. A ship cannot be considered *wreckum maris*, nor the claim of the lord to wreck sustained, unless, at the time of taking possession, she is either on the actual shore itself, or left high and dry on land. A derelict seized on land covered by the sea

condemned as a droit of Admiralty, and claim of the lord of the manor thereto as *wreckum maris* pronounced against. *The Pauline*, 9 Jur. 286., 2 W. Rob. 358., 3 Notes of Cases, 616.

12. If Spanish dollars, more than 100 years old, be found in the sands of a sea shore, it will be presumed that they came there by the loss of some vessel which was wrecked, although no part of any vessel be found near them. *Talbot v. Lewis*, 6 Car. & P. 603. (Parke.)

13. Priority of seizure is a fact of no importance in determining whether property be wreck of the sea or a droit of Admiralty. *The Pauline*, 9 Jur. 286., 2 W. Rob. 358., 3 Notes of Cases, 616.

## II. OF THE JURISDICTION OF THE HIGH COURT OF ADMIRALTY OVER — \*

14. By 15 R. 2. c. 3. it is declared, ordained, and established that the Admiral's Court shall have no manner of cognisance, power, nor jurisdiction over wreck of the sea, but the same shall be tried and determined by the laws of the land, and not by the Admiral nor his lieutenant in any wise.

15. In cases of wreck and derelict the jurisdiction of the Instance Court of Admiralty is ousted by the landing of the goods. *The Two Friends, McDougal*, 1 C. Rob. 282.†

16. The Admiralty has no jurisdiction over wreck of the sea, for that must be cast on the land before it becomes wreck. 2 Inst. 167.; *Sir H. Constable's Case* (1369), 5 Rep. 106.; *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 282.‡

17. The Admiralty has jurisdiction over things flotsam, jetsam, and lagan, as being

in and upon the sea. *Ibid.*; S. P. Raym. 96.

18. If flotsam come to land and be taken by him who has no title, the action shall be brought at Common Law, and no proceedings shall be had thereon in the Court of Admiralty, for there is no need of condemnation thereof, as there is of prizes. *The Lady Wyndham's Case* (1676), 2 Mod. 294.

19. The jurisdiction of the Admiralty subsists as long as the shore is covered with water. The rights of lords of manors can exist only as long as the land is left dry. *The Pauline*, 9 Jur. 286., 2 W. Rob. 358., 3 Notes of Cases, 616.

## III. OF THE SEIZURE AND CUSTODY THEREOF, AND THE MODE OF DEALING THEREWITH. §

### 1. Statutory regulations thereon.

20. By 8 & 9 Vict. c. 87. s. 78. no subject of her Majesty, except officers of the Navy, Customs, or Excise, shall intermeddle with or take up any spirits in casks of less than twenty gallons floating or sunk in the sea within 100 leagues of the United Kingdom, under pain of forfeiture thereof, and of the vessel or boat in which they are found.

21. By 9 & 10 Vict. c. 99. s. 12. no Vice-Admiral of any Court, his deputy or agent, shall be entitled as such to interfere with wreck, goods jetsam, flotsam, lagan, or derelict, &c.

22. By s. 5. all persons finding or in possession of wreck or goods jetsam, flotsam, lagan, or derelict, or any boat, vessel, apparel, anchor, tackle, stores, or any goods, merchandise, or other article whatsoever, which shall have been found at

\* 12. Prohibition lies to the Court of Admiralty in a suit there for wreck; for by the stat. 15 R. 2. c. 3. wreck is expressly mentioned to be determined by the law of the land. 4 Inst. 134. 154.

13. So also if the suit there be for goods floating upon the sea, and afterwards cast upon the land; for that is wreck. 1 Rol. 531. l. 40.

14. So if the suit there be for flotsam when it was wreck. *Ibid.* 529. l. 25., 2 Mod. 294.

† 15. When it is said by the Common Law authorities that the Admiralty has not jurisdiction over wreck of the sea, it is to be understood not what in the sense of the Maritime and Commercial Law is deemed wreck or shipwrecked property, but "wreck of the sea" in the purely technical sense of the Common Law, and constituting a royal franchise and a part of the revenue of the Crown of England, and often granted as such a

royal franchise to lords of manors. This and this only is excluded from the Admiralty jurisdiction in England. *The United States v. Coombs*, 12 Peters' (AMERICAN) Rep. 72.

16. In the case of the *Two Friends*, *supra* (1 C. Rob. 271.), the difficulty was not that the Admiralty Court had not jurisdiction, but that in cases of salvage on the instance side of the Court, no process of the Court could be served on land, but only on the water. *Ibid.*

‡ 17. Although strictly speaking the Court of Admiralty has no jurisdiction over questions of wreck, yet incidentally in suits for salvage the Court has jurisdiction. 2 Chitty's Gen. Prac. 531.

§ 18. As to the mode of dealing, &c. with wreck by the officers of the Admiralty prior to this statute, see *The Augusta, Louvel*, 1 Hagg. 20.



sea or elsewhere in any tidal water, or cast on shore, whether above or below high water mark, and wholly or partly on land or in the water, or any droit of Admiralty of any description, shall, whether entitled thereto or not, send a report in writing thereof to, and place the same at the disposal of, the neighbouring receiver of droits, or collector or comptroller of Customs, and every such officer of Customs shall forthwith transmit the same to the nearest receiver of droits. And every person who shall keep possession of any such property, or deface or alter the same, shall forfeit all claim to salvage and be liable to a penalty of not exceeding 100*l.*, and also to pay double the value of the articles to the owner if claimed, and otherwise to the Crown.

23. By s. 30. in case the master, mate, crew, or passenger of any ship shall find or take on board or in tow any ship, boat, anchor, cable, goods, or other article, or shall receive any such from any other person who may have found them, knowing the same to have been so found, such master, &c. shall, on the return or arrival of such ship in any port of the United Kingdom, and within twenty-four hours thereof, place such article at the disposal of the nearest receiver to such port, with a report in writing, containing an accurate description of the article, the marks thereon, and the time and place where it was found or taken on board; and such receiver shall transmit the same to the secretary at Lloyd's, to be hung up for inspection; and if the article shall not be claimed by the owner or his agent within twelve months after the transmission of such report, it shall be sold by the receiver, and the proceeds be dealt with in the manner thereinbefore directed with respect to other unclaimed articles. And if the master or other person shall not so report, &c. such articles, he shall forfeit all claim to salvage, be liable to a penalty of 100*l.*, and pay double the value of the article to the owner or the Crown, which may be recovered like penalties under this act.

24. By s. 6. any receiver of droits or officer of Customs may, by virtue of a warrant to be obtained from any magistrate, search for, seize, and detain any wreck, goods jetsam, flotsam, lagan, or derelict, or other article or droit in such act referred to, which shall not have been reported

or dealt with as directed by that act, either on shore, stranded, or afloat, and for that purpose enter any house, store, or building, or any ship, vessel, or boat; and every officer of Customs so seizing shall forthwith send to the nearest receiver a report in writing thereof; and every such receiver or officer so seizing shall be entitled to salvage for such articles; and if such seizure shall be made in consequence of information, the informer shall be entitled to such a reward out of the salvage as the receiver-general of droits shall allow; and when any such articles or droits of Admiralty found within the jurisdiction of the High Court of Admiralty shall be carried away out of such jurisdiction within the limits of the Cinque Ports or elsewhere, any receiver of droits may seize and carry away the same to be dealt with as by this act directed.

25. By s. 39. Commissioners of Customs and Excise are to permit goods, &c. saved from any vessel wrecked to be forwarded to the port of the vessel's original destination, if wrecked on the homeward voyage, and to the port of shipment if wrecked on the outward voyage, taking security for the protection of the revenue.

26. By s. 11. when no claim to any article of wreck, goods jetsam, flotsam, lagan, or derelict, &c. in the custody of any receiver of droits or collector of Customs under this act, shall be established by the owner or lord of manor, grantee of Crown, &c. within the time therein limited, such article shall be deemed a droit of Admiralty, and be sold by the receiver without any legal process, and the nett proceeds, after payment of salvage and charges, be transmitted to the Receiver-General of droits of Admiralty. And when any such article shall be of so perishable a nature or so injured that it cannot be kept, or the value be insufficient to defray the charge of warehousing, the receiver may forthwith sell the same, and, after payment of salvage and expenses, transmit the proceeds to the Receiver-General, to abide the claims of parties as if unsold. And any receiver having in his custody any article of wreck, &c. not exceeding 5*l.* in value may forthwith sell the same, pay salvage, and transmit the balance of proceeds as before provided; but in such latter case the salvor shall not be entitled to more than one third of such proceeds.\*

\* 19. By s. 36. any penalty imposed by this act may be recovered by information or action of

debt in any of her Majesty's Courts, or by information or complaint before any neighbouring justice,

## IV. OF THE RIGHT TO —

1. *Of the Crown and its grantees.\**

27. By 17 *Ed. 2. c. 11.* the King shall have wreck of the sea throughout the realm, whales and great sturgeons taken in the sea or elsewhere within the realm, except in certain places privileged by the King.

28. Wreck of the sea is a perquisite royal. *Sir Henry Constable's Case*, Dav. Rep. 56. b., 5 Rep. 107.

29. By the ancient Common Law all property stranded belongs to the King until the owner is found. He is to protect it for the owner for a year and a day, after which it belongs to him entirely. When a claim is made with a reasonable prospect of proof, his right of custody ceases, and he has no further interest in the property. *The Augusta, Louvel*, 1 Hagg. 18. 20.

30. By 9 & 10 *Vict. c. 99. s. 4.* lords of manors, grantees of the Crown, and others

entitled to wreck, or goods jetsam, flotsam, lagan, or derelict, are to give notice thereof to the neighbouring receiver of droits, and until such notice shall have been given, and in case of conflicting notices, until the claims of the parties shall have been decided by the receiver, or at Law or in Equity, such parties are not to be entitled to wreck, jetsam, &c. By *s. 8.* after such notice the receivers of droits are to give notice to such lords of manors and others of any such articles found within the district claimed by them.

31. By *s. 10.* when any article of wreck, goods flotsam, jetsam, lagan, or derelict, &c., in the custody of any receiver of droits under this act shall not have been legally claimed by the owners within twelve months, any lord of manor, grantee of wreck, &c., having given due notice of his claim to wreck as required by the 4th sect., who shall within thirty days after expiration of such twelve months make it appear

and (except where the contrary is so expressed) one half of such penalties shall go to the informer, and the other half to the receiver general of droits of Admiralty, to be applied like proceeds of droits, and in default of payment of such penalties and charges forthwith, the same may (except as therein-after mentioned) be levied by warrant of such justice on the goods of the offender, and if no sufficient distress shall be found, the offender shall be committed to gaol with or without hard labour, for the first offence for any period not exceeding six months, and for the second or further offence for any period not exceeding twelve months, unless the penalty and charges be sooner paid, and such conviction shall be in the form therein mentioned, and no *certiorari* or other process for the removal of such conviction or proceedings thereon into any of her Majesty's Courts of Record at Westminster or elsewhere shall be allowed. By *s. 37.* any person so convicted by any justice or magistrate may, within three months, appeal to the justices in quarter sessions.

† 20. The King shall have flotsam, jetsam, and lagan when a ship perishes, or when the owner of the goods cannot be known. This right attaches though they are in or upon the sea, for the sea is of the allegiance of the King, and parcel of his Crown of England. 5 Rep. 107.

21. By the Common Law, as declared by the statute *De Prerogativa Regis*, 17 *Ed. 2. stat. 2. c. 11.*, the King is entitled to wreck. 1 *Black. Comm.* 290.

22. The prevention of the barbarous practice of destroying the property of the shipwrecked was the object of the law in conferring this prerogative on the King. *Cro. Jur. Belli*, 117. 132. 141., 2 *Inst.* 167., *Molloy*, 237., *Moor*, 224., *Hale de Jure Mar.* 40.

23. Wreck may belong to the subject either by grant from the King or by prescription. 2 *Inst.* 168.

24. The law of England gave to the sovereign,

*jure coronæ*, all wreck cast upon land, and it similarly gave to the sovereign by his prerogative, afterwards to the Lord High Admiral *jure regie*, as of the sovereign's gift, flotsam, jetsam, lagan, and all wreck found in the sea, at all events in the narrow seas, or in any haven, port, or creek, or arm of the sea, on the coasts. In many places wreck cast upon the land was granted by the Crown to lords of manors or others. In some places it has been long enjoyed by prescription, presumed founded on a grant from the Crown. The right to wreck by prescription may be attached to an honour, as to that of Arundel, or to a county, as all wreck on the Cornish coast belongs to the Duchy of Cornwall unless otherwise specially prescribed for. A subject may also have flotsam and jetsam by the King's grant, and may have flotsam between high and low water mark by prescription. All unreclaimed wreck, however, cast upon land, where not so granted out by the Crown or enjoyed by prescription, is still vested in the sovereign, forming part of the casual revenues of the Crown placed at the disposal of parliament by her present Majesty during her life, and by statute 1 & 2 *Vict. c. 2.* to be carried to the Consolidated Fund. So unreclaimed wreck at sea, flotsam, jetsam, lagan, and derelict (where there is no grant or prescription to the contrary), having been anciently annexed to the office of Lord High Admiral, still constitute droits of Admiralty. These droits are now vested in the sovereign as Lord High Admiral, but are included in the casual revenues of the Crown surrendered as before mentioned. *Palmer on Wreck*, 5.

25. The Barons of the Cinque Ports claim to be wreck free by charter of Edward I. *Plac. 4 Ed. 1.*, *Palmer on Wreck*, 38.

26. In the Isle of Man unreclaimed wreck, whether cast on the shore or found in the sea within the headlands of Man, now belongs to the Crown. *Palmer on Wreck*, 50.

27. Property lagan belongs to the King if no owner appear to claim it. 1 *Black. Comm.* 292.

to such receiver by satisfactory evidence that such article was found within the district of such lord, &c., shall have such article delivered up to him on payment of the duties and charges for care and removal thereof, a reasonable compensation for salvage, and 5 per cent. on the value of the article, which percentage, whatever the value, is not to exceed 50*l*. And if the receiver shall determine against the evidence produced by the lord of the manor, &c., as to the finding of such article, he shall at the request of such party signify the same in writing, with the date thereof, and the reasons for the same.

32. Usage is not in itself good as against the Crown, except as evidence of a grant from it. *Primâ facie* all goods without an owner belong to the Crown, and if a claim be set up against it, the party setting it up must show an actual grant or usage from which such a grant may be presumed as might have been made conformably with the law. *The King v. Two Casks of Tallow*, 3 Hagg. 297.

33. The grantee of wreck has a special property in all goods stranded within his liberty, and may maintain trespass against a wrongdoer for taking them away, though such goods were part of a cargo of a ship from which some persons escaped alive to land, and though the owners within a year and a day claimed and identified them, and though the taking was before any seizure on behalf of the grantee. *Dunwich, Bailiffs, &c. of, v. Sterry*, 1 B. & Ad. 831.

#### (a) Of lords of manors.\*

34. Lords of manors are grantees of the Crown of those royalties and privileges which may be established by the grants themselves or by immemorial custom, but the grantees cannot stand on higher ground than the Crown, nor can their grants avail against the general principle of law as to property stranded. *The Augusta, Louvel*, 1 Hagg. 19.

35. Wreck of the sea is land revenue, and is generally granted to the lord of a

manor on the coast. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 288.

36. Manors being part of the *corpus comitatûs*, manorial rights are land jurisdictions, but the Crown may in many instances have granted the royalties of certain manors to subjects. In most manors on the sea coast the lords claim the royalty of wrecks, and prove their right as against the Crown by the usage of taking them, and by the exercise of such right never having been questioned. *The King v. Two Casks of Tallow*, *Ibid.* 297.

37. Unless the place where a wreck is situated at the time of the taking possession thereof be *infra corpus comitatûs*, the lord of the manor claiming in that capacity merely can have no right or title thereto. *Regina v. The Pauline*, 9 Jur. 288.

#### 2. Of the Lord High Admiral.

38. Wreck may be claimed by prescription and may belong to the Lord High Admiral by prescription, for it is an ancient office, time whereof, &c.; and *semble*, that wreck belonged to the Admiral about the Cinque Ports and such places where he was most conversant in ancient time. *Wigan v. Branthwaite* (1700), 12 Mod. 260.

#### 3. Of former owners.†

39. By 9 & 10 *Vict. c. 99. s. 9* if the rightful owner of wreck, goods jetsam, flotsam, lagan, or derelict, &c., reported or seized under this act shall, within twelve months therefrom, make out his claim thereto to the satisfaction of the receiver, the same shall be restored to him on payment of the duties and necessary charges attending the care or removal thereof, a reasonable compensation for salvage, and 5 per cent. on the value of the article, but such percentage is in no case, whatever the value of the property, to exceed 50*l*. And by *s. 10* if the receiver shall pronounce against the claim of any person as owner, he shall at his request signify such deter-

\* 28. In Jersey, Guernsey, Alderney, and Sark, all wreck cast upon the shore or within reach of a person standing on the shore (except certain valuables which go to the Crown), belongs to the lord of the manor if not reclaimed within a year and a day, though perhaps the island Courts would admit the prior owner's claim if proved, though a year and a day had elapsed. *Palmer on Wreck*, 49.

† 29. Property lagan belongs to the King if no

owner appear to claim it; but if any owner appear he is entitled to recover the possession; for even if it be cast overboard without any mark or buoy, in order to lighten the ship, the owner is not, by this act of necessity, construed to have renounced his property; much less can things lagan be supposed to be abandoned, since the owner has done all in his power to assert and retain his property therein. 1 *Black. Comm.* 292.

mination in writing, with the date thereof and the reasons for the same.

#### 4. Of finders of—\*

40. By 8 & 9 *Vict. c. 87. s. 79.* persons giving information of spirits in casks of less than twenty gallons floating or sunk in the sea shall receive such rewards as the Commissioners of Customs shall direct, but by *s. 78.* they may not intermeddle with or take up the same.

#### 5. Of the proof of—

41. Two allowances in eyre and a judgment in trespass 400 years since are not conclusive evidence against an usage for 92 years last past to have the wreck of the sea. *Biddulph v. Ather*, 2 Wils. 23.

42. *Semble*, that wreck will not pass under general words in a grant. *Alcock v. Cook*, 2 M. & P. 625., 5 Bing. 340.

43. Parol evidence cannot be resorted to in order to support a prescriptive right to wreck, if it appear that the property in respect of which wreck is claimed was in the Crown in the time of Charles I., as a jury could not infer that it was in those under whom the party claims from time of legal memory. *Ibid.*

44. In trespass by the lord of a manor for wreck, a document dated in 1639 was offered in evidence purporting to be the answer of certain persons, tenants of the manor, to a commission issued by the lord of the manor for surveying the same, in which document it was stated that the lord was entitled to wreck: *Held* that this evidence was inadmissible, the title of the lord not being a matter of public concern, and the jurors having no peculiar means of knowledge. *Talbot v. Lewis*, 1 C. M. & R. 495.

#### V. OF THE RESPONSIBILITY OF PARTIES FOR DAMAGE TO—

45. By 9 & 10 *Vict. c. 99. s. 44.* in case of vessels in distress, wrecked, stranded, or run on shore, being wholly or in part plundered, damaged, or destroyed by a tumultuous assemblage, whether on shore or

afloat, the hundred shall be liable for the damages, in England and Wales in the same manner as is provided by the stat. 7 & 8 *Geo. 4. c. 31.*, and in Ireland in the same manner as is provided by the stat. 3 & 4 *W. 4. c. 37.*

46. The principal provisions of the stat. 7 & 8 *Geo. 4. c. 31.* (which extends to England only) are, *s. 3.* to entitle persons to bring actions for damages under the act, they or their servants in charge of the property damaged shall go before a neighbouring justice and be examined touching the same, and become bound by recognisances to prosecute the offenders, and the action must be commenced within three months from the commission of the offence; *s. 4.* process in the action against the hundred is to be served on the high constable, who may defend or let judgment go by default, as advised; *s. 6.* if the plaintiff recovers, the sheriff, on the receipt of the writ of execution, shall make out a warrant directing the treasurer of the county to pay the amount; *s. 8.* where the damage does not exceed 30*l.* no action shall be brought, but the party damnified shall within seven days from the commission of the offence give notice of claim for compensation, according to the form in the schedule, to the high constable of the hundred, who shall exhibit the same to two justices of the hundred, who shall appoint a special petty sessions to hear the claim, and notices thereof are to be given as therein directed; *s. 9.* the justices in such petty sessions shall hear and determine the claim, and if they shall find that any damage has been sustained, they shall make an order for the payment thereof with costs, and direct the same to the treasurer of the county, who shall pay the same; *ss. 12. 14.* and 15. direct the mode of reimbursement in liberties, towns, and cities.

47. The provisions of the stat. 3 & 4 *W. 4. c. 37.* (which extends to Ireland only) referred to in the above act (stat. 9 & 10 *Vict. c. 99.*) are those contained in the 72*d* sect., which enacts that a judge or judges of assize, &c. may grant com-

\* 30. If treasure be found in the sea, the finder shall have it. 2 *Inst.* 168., 22 *Vin. Abr.* 541.

31. By the general law, things found in the open sea, common to all nations, still belong to the first occupant. The posthumous treatise of Lord Hale expressly states that "flotsam, jetsam, lagan, and other sea estrays, if taken up in the

wide ocean belong to the taker of them, if the owner cannot be known," limiting the right of the Crown to such things taken up within the King's seas. *Hale, de Jure Maris, c. 7.*, *Hargrave's Law Tracts, p. 41.*, see also 1 *Comm.* 295., 2 *Comm.* 402., *Palmer on Wreck, 8.* But see 9 & 10 *Vict. c. 99. s. 30.* (*No. 26. supra.*)

pensation for malicious injury or damage to churches, to be levied by grand jury presentment, which presentment may be traversed, if above 5*l*., and the traverse may be tried at the same or the ensuing assizes, but notice of the offence is to be given within ten days after its commission to the parties therein specified.

48. By 9 & 10 *Vict. c. 99. s. 45.* every person wrongfully carrying away or removing any part of any vessel in distress, wrecked, stranded, or cast on shore, or any goods or other article belonging thereto (or unless a receiver or other officer or justice therein-before authorized to give orders in cases of wreck), entering or endeavouring to enter on board any such vessel without the consent of the master or superior officer thereof, or of a receiver or other officer authorized to give orders in cases of wreck, or molesting or impeding any person employed in saving such vessel or goods, shall forfeit 50*l*., and where such person shall have been detained or taken before a justice of peace for such offence, such justice may proceed summarily in the case, convict the offender, and in default of payment commit him to gaol, with or without hard labour, for any time not exceeding six months. And

masters or superior officers of ships so in distress, &c., or the receiver or other officer authorized to give orders, may repel by force any such person as shall without such consent press on board any such vessel.\*

49. Accidental loss to various portions of property (wreck and droits) claimed by two parties, it not being ascertainable to which party in particular the particular property damaged belonged, decreed to be apportioned between the parties in the proportion of their claims on such property. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 293.

#### VI. MISCELLANEA.†

50. The duty of grantee of wreck of sea is to proceed judicially, remunerating salvors, and allowing a year for owners to appear and claim. *The King v. Forty-nine Casks of Brandy*, 3 Hagg. 290. (but see 9 & 10 *Vict. c. 99.*)

51. Possession of a ship under a transfer void for non-compliance with the Register Acts, is a sufficient title in trover against a stranger for parts of the ship being wrecked. *Sutton v. Buck*, 2 Taunt. 302.

\* 32. The 9 & 10 *Vict. c. 99.* makes provision (in ss. 28, 29. and 31.) for punishing persons removing, altering, or destroying boats, buoys, buoy ropes, &c., or fraudulently purchasing anchors, boats, goods, &c., and pilots and others selling vessels, boats, anchors, &c., in foreign countries.

† 33. It is the duty of a British consul to claim and recover all wrecks, cables, and anchors belonging to British subjects, to pay the usual salvage, and report a communication thereof to the Trinity Board. *Fynn's British Consul's Handbook*, 14. 51.

# APPENDIX.

## INDEX.

|        |                     |   | Page  |
|--------|---------------------|---|---|
| No. I. | ADMIRALTY,          | <i>Jurisdiction of the High Court of,</i>   | 3 & 4 Vict. c. 65. - 518                                    |
| II.    | APPEALS,            | <i>Appellate Jurisdiction of the Privy Council</i>  | 2 & 3 W. 4. c. 92. - 522                                    |
| III.   | —,                  | <i>Constitution of the Judicial Committee of the Privy Council, its Powers and Jurisdiction</i> | 3 & 4 W. 4. c. 41. - 523                                    |
| IV.    | —,                  | <i>Further Regulations thereon</i>  | 6 & 7 Vict. c. 38. - 529                                    |
| V.     | —,                  | <i>Further Regulations thereon</i>  | 7 & 8 Vict. c. 69. - 532                                    |
| VI.    | CAPTORS,            | <i>Instructions to Privateers</i>   | Issued May 16. 1803 535                                     |
| VII.   | —,                  | <i>Proclamation as to Distribution of Proceeds of Prize, and other Seizures,</i>                | Issued May 19. 1846 538                                     |
| VIII.  | COLOURS,            | <i>Proclamation as to Colours to be worn by Merchant Ships</i>                                  | Issued Jan. 1. 1801 - 540                                   |
| IX.    | COSTS               | <i>Order in Council as to Taxation of Costs in the Judicial Committee of the Privy Council</i>  | Issued August 11. 1842 - 542                                |
| X.     | DAMAGE,             | <i>Regulation of Steam Navigation</i>   | 9 & 10 Vict. c. 100. 543                                    |
| XI.    | DROITS OF ADMIRALTY | <i>Order in Council defining the Rights of the Lord High Admiral</i>                            | Issued March 6. 1665-6 - 549                                |
| XII.   | FREIGHT,            | <i>Proclamations respecting Freight on the Conveyance of Public and Private Treasure</i>        | Issued July 12. 1819., April 23. 1831., June 8. 1831. - 550 |
| XIII.  | NAVIGATION LAWS,    | <i>Navigation Act</i>   | 8 & 9 Vict. c. 88. - 555                                    |
| XIV.   | —,                  | <i>Ship's Register Act</i>  | 8 & 9 Vict. c. 89. - 558                                    |
| XV.    | OWNERS,             | <i>Limitation of Responsibility of,</i>   | 53 Geo. 3. c. 159. - 573                                    |
| XVI.   | PILOTS,             | <i>Pilots and Pilotage</i>  | 6 Geo. 4. c. 125. - 577                                     |
| XVII.  | PIRATES,            | <i>Bounties on Capture of piratical Ships</i>   | 6 Geo. 4. c. 49. - 604                                      |
| XVIII. | PRIZE AGENTS,       | <i>Regulation of Navy Prize Agents</i>  | 54 Geo. 3. c. 93. - 605                                     |
| XIX.   | —,                  | <i>Payment of Navy Prize Orders</i>   | 59 Geo. 3. c. 56. - 630                                     |
| XX.    | SALVAGE,            | <i>Salvage and Wreck</i>  | 9 & 10 Vict. c. 99. - 636                                   |
| XXI.   | SLAVE TRADE,        | <i>Slave Trade Abolition</i>  | 5 Geo. 4. c. 113. - 652                                     |
| XXII.  | —,                  | <i>Bounties on Slave Seizures</i>   | 1 W. 4. c. 55. - 673  |
| XXIII. | —,                  | <i>Tonnage Bounties on Slave Seizures</i>   | 1 & 2 Vict. c. 47. - 673                                    |
| XXIV.  | —,                  | <i>Further Regulations for the Suppression of the Slave Trade</i>                               | 2 & 3 Vict. c. 73. - 675                                    |
| XXV.   | —,                  | <i>Further Regulations for the Suppression of the Slave Trade</i>                               | 5 & 6 Vict. c. 91. - 677                                    |
| XXVI.  | WAGES,              | <i>Merchant Seaman's Act</i>  | 7 & 8 Vict. c. 112. - 680                                   |

## No. I.

3 & 4 Vict. c. 65. (7th August, 1840.)

*An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England.*

WHEREAS the jurisdiction of the High Court of Admiralty of England may be in certain respects advantageously extended, and the practice thereof improved : be

it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the Dean of the Arches for the time being to be assistant to and to exercise all the power, authority, and jurisdiction, and to have all the privileges and protections of the Judge of the said High Court of Admiralty, with respect to all suits and proceedings in the said Court, and that all such suits and proceedings, and all things relating thereto, brought or taking place before the Dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same time sitting or transacting the business of the same Court, and also during any vacancy of the office of Judge of the said Court, shall be of the same force and effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such suits and proceedings shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the Judge of the High Court of Admiralty.

II. And be it declared and enacted, That all persons who now are or at any time hereafter may be entitled to practise as advocates in the Court of Arches are and shall be entitled to practise as advocates in the said High Court of Admiralty; and that all persons who now are or hereafter may be entitled to act as surrogates or proctors in the Court of Arches shall be entitled respectively to practise and act, or to be admitted to practise and act, as the case may be, as surrogates and proctors in the said High Court of Admiralty, according to the rules and practice now prevailing and observed or hereafter to be made in and by the said High Court of Admiralty touching the admission and practising of advocates, surrogates, and proctors in the said Court respectively.

III. And be it enacted, That after the passing of this Act, whenever any ship or vessel shall be under arrest by process issuing from the said High Court of Admiralty, or the proceeds of any ship or vessel having been so arrested shall have been brought into and be in the registry of the said Court, in either such case the said Court shall have full jurisdiction to take cognisance of all claims and causes of action of any person in respect of any mortgage of such ship or vessel, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively.

IV. And be it enacted, That the said Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel, or the proceeds thereof remaining in the registry, arising in any cause of possession, salvage, damage, wages, or bottomry, which shall be instituted in the said Court after the passing of this act.

V.\* [*This section is repealed by 9 & 10 Vict. c. 99.*]

VI. And be it enacted, That the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel, or in the nature of towage, or for necessities supplied to any foreign ship or sea-going vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessities furnished, in respect of which such claim is made.

VII. And be it enacted, That in any suit depending in the said High Court of Admiralty the Court (if it shall think fit) may summon before it and examine or cause to be examined witnesses by word of mouth, and either before or after examination by deposition, or before a Commissioner, as herein-after mentioned; and notes of such evidence shall be taken down in writing by the Judge or Registrar, or by such other person or persons, and in such manner, as the Judge of the said Court shall direct.

VIII. And be it enacted, That the said Court may, if it shall think fit, in any such suit issue one or more special commissions to some person, being an advocate of the said High Court of Admiralty of not less than seven years standing, or a barrister-at-law of not less than seven years standing, to take evidence by word of mouth, upon oath, which every such Commissioner is hereby empowered to administer, at such time or times, place or places, and as to such fact or facts, and in such manner, order, and course, and under such limitations and restrictions, and to transmit the same to the registry of the said Court, in such form and manner as in and by the commission shall be directed; and that such Commissioner shall be attended, and the witnesses shall be examined, cross-examined, and re-examined by the parties, their counsel, proctors, or agents, if such parties, or either of them, shall think fit so to do; and such commission shall, if need be, make a special report to the Court touching such examination,

Dean of Arches to sit for Judge of Court of Admiralty in certain cases.

Advocates, surrogates, and proctors of Court of Arches to be admitted in Court of Admiralty.

Whenever a vessel shall be arrested, or proceeds brought into registry, the Court to have jurisdiction over claims of mortgages.

Court to decide questions of title in all causes of possession, salvage, &c.

\* Appeals may be made to the Court of Admiralty from awards of magistrates, Commissioners of Cinque Ports and others, and the distribution of such awards may be enforced by the Court of Admiralty.

The Court, in certain cases, may adjudicate on claims for services, and necessities, although not on the high seas.

Evidence may be taken viva voce in open Court.

Evidence may be taken viva voce before a Commissioner.

and the conduct or absence of any witness or other person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted or made in any case of contempt of the said Court.

Attendance of witnesses and production of papers may be compelled by subpoena.

IX. And be it enacted, That it shall be lawful in any suit depending in the said Court of Admiralty for the Judge of the said Court, or for any such commissioner appointed in pursuance of this act, to require the attendance of any witnesses, and the production of any deeds, evidences, books, or writings, by writ, to be issued by such Judge or Commissioner in such and the same form, or as nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by her Majesty's Court of Queen's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said Judge or Commissioner shall be considered as in contempt of the said High Court of Admiralty, and may be punished for such contempt in the said Court.

Provisions of 3 & 4 W. 4. c. 42. extended to Court of Admiralty.

X. And be it enacted, That all the provisions of an act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Administration of Justice," with respect to the admissibility of the evidence of witnesses interested on account of the verdict or judgment, shall extend to the admissibility of evidence in any suit pending in the said Court of Admiralty, and the entry directed by the said act to be made on the record of judgment shall be made upon the document containing the final sentence of the said Court, and shall have the like effect as the entry on such record.

Power to direct issues.

XI. And be it enacted, That in any contested suit depending in the said Court of Admiralty the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue or issues on any question or questions of fact arising in any such suit, and that the substance and form of such issue or issues shall be specified by the Judge of the said Court at the time of directing the same; and if the parties differ in drawing such issue or issues, it shall be referred to the Judge of the said Court to settle the same; and such trial shall be had before some Judge of her Majesty's Superior Courts of Common Law at Westminster, at the sittings at Nisi Prius in London or Middlesex, or before some judge of assize at Nisi Prius, as to the said Court shall seem fit.

Costs of issues and commissions to be in the discretion of the Court.

XII. And be it enacted, That the costs of such issues, or of such commission as aforesaid, as the Judge of the said High Court of Admiralty shall under this act direct, shall be paid by such party or parties, person or persons, and be taxed by the registrar of the said High Court of Admiralty, in such manner as the said Judge shall direct, and that payment of such costs shall be enforced in the same manner as costs between party and party may be enforced in other proceedings in the said Court.

Power to direct new trials.

XIII. And be it enacted, That the said Court of Admiralty, upon application to be made within three calendar months after the trial of any such issue by any party concerned, may grant and direct one or more new trials of any such issue, and may order such new trial to take place in the manner herein-before directed with regard to the first trial of such issue, and may, by order of the same Court, direct such costs to be paid as to the said Court shall seem fit upon any application for a new trial, or upon any new trial, or second or other new trial, and may direct by whom and to whom and at what times and in what manner such costs shall be paid.

Granting or refusing new trial, matter of appeal.

XIV. And be it enacted, That the granting or refusing to grant an issue, or a new trial of any such issue, may be matter of appeal to her Majesty in Council.

Bills of exceptions to be allowed on trials of issues.

XV. And be it enacted, That at the trial of any issue directed by the said High Court of Admiralty, either party shall have all the like powers, rights, and remedies with respect to bills of exceptions as parties impleaded before justices may have, by virtue of the statute made in that behalf in the thirteenth year of the reign of king Edward the First, with respect to exceptions alleged by them before such justices, or by any other statute made in the like behalf; and every such bill of exceptions, sealed with the seal of the judge or judges to whom such exceptions shall have been made, shall be annexed to the record of the trial of the said issue.

Record of the issue to be transmitted to the Court of Admiralty.

XVI. And be it enacted, That the record of the said issue, and of the verdict therein, shall be transmitted by the associate or other proper officer to the registrar of the said Court of Admiralty; and the verdict of the jury upon any such issue (unless the same shall be set aside) shall be conclusive upon the said Court, and upon all such persons; and in all further proceedings in the cause in which



such fact is found the said Court shall assume such fact to be as found by the jury.

XVII. And be it enacted, That every person who, if this act had not been passed, might have appealed and made suit to her Majesty in Council against any proceeding, decree, or sentence of the said High Court of Admiralty under or by virtue of an act passed in the third year of the reign of his late Majesty, intituled "An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council," may in like manner appeal and make suits to her Majesty in Council against the proceedings, decrees, and sentences of the said Court in all suits instituted and proceedings had in the same by virtue of the provisions of this act, and that all the provisions of the said last-mentioned act shall apply to all appeals and suits against the proceedings, decrees, and sentences of the said Court in suits instituted and proceedings had by virtue of the provisions of this act; and such appeals and suits shall be proceeded in in the manner and form provided by an act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council;" and all the provisions of the said last-mentioned act relating to appeals and suits from the High Court of Admiralty shall be applied to appeals and suits from the said Court in suits instituted and proceedings had by virtue of the provisions of this act: Provided always, that in any such appeal the notes of evidence taken as herein-before provided by or under the direction of the Judge of the said High Court of Admiralty shall be certified by the said Judge to her Majesty in Council, and shall be admitted to prove the oral evidence given in the said Court of Admiralty, and that no evidence shall be admitted on such appeal to contradict the notes of evidence so taken and certified as aforesaid, but this proviso shall not enure to prevent the Judicial Committee of the Privy Council from directing witnesses to be examined and re-examined upon such facts as to the committee shall seem fit, in the manner directed by the last-recited act.

XVIII. And be it enacted, That it shall be lawful for the Judge of the said High Court of Admiralty from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding of the said Court, and the conduct and duties of the officers and practitioners therein, as to him shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: Provided always, that no such rules, orders, or regulations shall be of any force or effect until the same shall have been approved by her Majesty in Council.

XIX. And be it declared and enacted, That no action shall lie against the Judge of the said High Court of Admiralty for error in judgment, and that the said Judge shall be entitled to and have all privileges and protections in the exercise of his jurisdiction as Judge of the said Court which by law appertain to the Judges of her Majesty's Superior Courts of Common Law in the exercise of their several jurisdictions.

XX. And be it enacted, That the keeper for the time being of every common gaol or prison shall be bound to receive and take into his custody all persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any coroner appointed by the Judge of the said Court of Admiralty, upon any inquest taken within or upon the high seas adjacent to the county or other jurisdiction to which such gaol or prison belongs; and every keeper of any gaol or prison who shall refuse to receive into his custody any person so committed, or wilfully or carelessly suffer such person to escape and go at large without lawful warrant, shall be liable to the like penalties and consequences as if such person had been committed to his custody by any other lawful authority.

XXI. And be it enacted, That it shall be lawful for the Judge of the said High Court of Admiralty to order the discharge of any person who shall be in custody for contempt of the said Court, for any cause other than for nonpayment of money, on such conditions as to the Judge shall seem just: Provided always, that the order for such discharge shall not be deemed to have purged the original contempt in case the conditions on which such order shall be made be not fulfilled.

XXII. And be it enacted, That the said High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war, or the distribution thereof, which it shall please her Majesty, her heirs and successors, by the advice of her and their Privy Council, to refer to the judgment of the said Court; and in all matters so referred the Court shall proceed as in cases of prize of war, and the judgment of the Court therein shall be binding upon all parties concerned.

Provisions of 2 & 3 W. 4. c. 92. as to appeals to apply to suits in Court of Admiralty under this act.

3 & 4 W. 4. c. 41. to apply in same manner.

Certified notes of evidence taken may be admitted on appeal.

Power for Judge of Admiralty to make rules of Court.

Protection of the Judge of the Court of Admiralty.

Gaolers to receive prisoners committed by the Court of Admiralty or by Admiralty coroners.

Prisoners in contempt may be discharged.

Jurisdiction to try questions concerning booty of war.

Jurisdiction of  
Courts of Law  
and Equity not  
taken away.

XXIII. Provided always, and be it enacted, That nothing herein contained shall be deemed to preclude any of her Majesty's Courts of Law or Equity now having jurisdiction over the several subject matters and causes of action herein-before mentioned from continuing to exercise such jurisdiction as fully as if this act had not been passed.

## No. II.

2 & 3 W. 4. c. 92. (7th August, 1832.)

*An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council.*

25 H. 8. c. 19. WHEREAS by an act passed in the twenty-fifth year of the reign of King Henry the Eighth, and intituled "The Submission of the Clergy and Restraint of Appeals," it is (amongst other things) provided, that for lack of justice at or in any of the Courts of the Archbishops of this realm, or in any of the King's dominions, it should be lawful to the parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such appeal a commission should be directed under the Great Seal to such persons as should be named by the King's Highness, his heirs or successors, like as in case of appeal from the Admirals Court, to hear and definitively determine such appeals, and the causes concerning the same; which Commissioners so by the King's Highness, his heirs or successors, to be named or appointed, should have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same; and that such judgment and sentence as the said Commissioners should make and decree in and upon any such appeal should be good and effectual, and also definitive, and that no further appeals should be had or made from the said Commissioners for the same; and that all manner of provocations and appeals thereafter to be had, made, or taken, from the jurisdiction of any abbots, priors, or other heads and governors of monasteries, abbeys, priories, and other houses and places exempt, in such cases as they were wont or might afore the making of the act now in recital, by reason of grants or liberties of such places exempt, to have or make immediately any appeal or provocation to the Bishop of Rome otherwise called Pope, or to the see of Rome, in all those cases every person and persons having cause of appeal or provocation should and might take and make their appeals and provocations immediately to the King's Majesty of this realm, into the Court of Chancery, in the manner and form as they used afore to do to the see of Rome; which appeals and provocations so made should be definitively determined by authority of the King's Commission in such manner and form as was in the said act now in recital above mentioned, so that no archbishop or bishop of this realm should intermit or meddle with any such appeals otherwise or in any other manner than they might have done afore the making of the act now in recital; any thing in the act now in recital to the contrary thereof notwithstanding: And whereas by an act passed in the eighth year of the reign of Queen Elizabeth, and intituled "For the avoiding of tedious Suits in Civil and Marine Causes," it is provided that every such judgment and sentence definitive as should be given and pronounced in any civil and marine cause, upon appeal lawfully to be made therein to the Queen's Majesty in her Highness' Court of Chancery, by such Commissioners or Delegates as should be nominated and appointed by her Majesty, her heirs or successors, by commission under the half seal, as it had been theretofore used in such cases, should be final, and that no further appeal should be made from the said judgment or sentence definitive, or from the said Commissioners or Delegates, for or in the same; any law, usage, or custom to the contrary notwithstanding: And whereas the persons who from time to time have been appointed Commissioners by commission under the Great Seal or under the half seal, by virtue of the authority of either of the herein-before recited acts, have been commonly called "The High Court of Delegates:" And whereas, notwith-

8 Eliz. c. 5.

standing the herein-before recited acts, the King's Majesty for the time being hath out of his royal favour occasionally granted, upon petition to him in Council made for that purpose, a commission under the Great Seal authorizing the Commissioners therein named to review the judgments and decrees of the High Court of Delegates so appointed as aforesaid: And whereas it is expedient that the herein-before recited act of the eighth year of Queen Elizabeth, and also so much of the herein-before recited act of the twenty-fifth year of King Henry the Eighth as relates to the appeal to his Majesty in Chancery, should be repealed, and that all the powers which by virtue of either of the said acts have or might have been enjoyed by the said High Court of Delegates should be in future exercised by his Majesty in Council, and that no such Commission of Review as aforesaid should hereafter be granted; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the herein-before recited act of the twenty-fifth year of the reign of King Henry the Eighth, so far as relates to any power thereby given to appeal in any case to the King's Majesty in his High Court of Chancery, and so far as the same empowers his Majesty to grant a Commission under the Great Seal authorizing the persons therein named to hear and determine such appeals, shall, as from the first day of February one thousand eight hundred and thirty-three, be and the same is hereby repealed.

II. And be it also enacted, That the herein-before recited act of the eighth year of the reign of Queen Elizabeth shall, as from the first day of February one thousand eight hundred and thirty-three, be and the same is hereby repealed.

III. And be it further enacted, That from and after the said first day of February one thousand eight hundred and thirty-three it shall be lawful to and for every person who might heretofore, by virtue of either of the said recited acts, have appealed or made suit to his Majesty in his High Court of Chancery, to appeal or make suit to the King's Majesty, his heirs, or successors, in Council, within such time, in such manner, and subject to such rules, orders, and regulations for the due and more convenient proceeding, as shall seem meet and necessary, and upon such security, if any, as his Majesty, his heirs, and successors, shall from time to time by Order in Council direct; and that the King's Majesty, his heirs, and successors, in Council, shall thereupon have power to proceed to hear and determine every appeal and suit so to be made by virtue of this act, and to make all such judgments, orders, and decrees in the matter of such appeal or suit as might heretofore have been made by his Majesty's Commissioners appointed by virtue of either of the herein-before recited acts if this act had not been passed; and that every such judgment, order, and decree so to be made by the King's Majesty, his heirs and successors, shall have such and the like force and effect in all respects whatsoever as the same respectively would have had if made and pronounced by the aforesaid High Court of Delegates; and that every such judgment, order, and decree shall be final and definitive, and that no commission shall hereafter be granted or authorized to review any judgment or decree to be made by virtue of this act.

IV. *Proviso that appeals now pending, or which may be pending previous to the first day of February one thousand eight hundred and thirty-three, are not to be affected by this act.*

25 H. 8. c. 19., so far as relates to the power of appeal and to the appointment of Delegates, repealed from 1 Feb. 1833.

8 Eliz. c. 5. repealed from 1 Feb. 1833. From 1 Feb. 1833 powers of the High Court of Delegates transferred to the King in Council; and no commission of review to be thereafter granted.

### No. III.

3 & 4 W. 4. c. 41. (14th August, 1833.)

*An Act for the better Administration of Justice in His Majesty's Privy Council.*

WHEREAS by virtue of an act passed in a session of parliament of the second and third years of the reign of his present Majesty, intituled "An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council," it was enacted, that from and after

2 & 3 W. 4. c. 92.

25 Hen. 8.  
cap. 19.

8 Eliz. c. 5.

Certain persons  
to form a com-  
mittee, to be  
styled "The  
Judicial Com-  
mittee of the  
Privy Coun-  
cil."

Appeals from  
Vice-Ad-  
miralty Courts  
abroad, &c., to  
be made to the  
King in Coun-  
cil.

All appeals  
from sentence  
of any Judge,  
&c. to be re-  
ferred by his  
Majesty to the  
Committee, to  
report thereon.

the first day of February one thousand eight hundred and thirty-three it should be lawful for every person who might theretofore, by virtue either of an act passed in the twenty-fifth year of the reign of King Henry the Eighth, intituled "The Submission of the Clergy and Restraint of Appeal," or of an act passed in the eighth year of the reign of Queen Elizabeth, intituled "For the avoiding of tedious Suits in Civil and Marine Causes," have appealed or made suit to his Majesty in his High Court of Chancery, to appeal or make suit to the King's Majesty, his heirs or successors in Council, within such time, in such manner, and subject to such rules, orders, and regulations for the due and more convenient proceeding, as should seem meet and necessary, and upon such security, if any, as his Majesty, his heirs and successors, should from time to time by Order in Council direct: and whereas, by letters patent under the Great Seal of Great Britain, certain persons, members of his Majesty's Privy Council, together with others, being Judges and Barons of his Majesty's Courts of Record at Westminster, have been from time to time appointed to be his Majesty's Commissioners for receiving, hearing, and determining appeals from his Majesty's Courts of Admiralty in causes of prize: and whereas, from the decisions of various Courts of Judicature in the East Indies, and in the plantations, colonies, and other dominions of his Majesty abroad, an appeal lies to his Majesty in Council: and whereas matters of appeal or petition to his Majesty in Council have usually been heard before a committee of the whole of his Majesty's Privy Council, who have made a report to his Majesty in Council, whereupon the final judgment or determination hath been given by his Majesty: and whereas it is expedient to make certain provisions for the more effectual hearing and reporting on appeals to his Majesty in Council and on other matters, and to give such powers and jurisdiction to his Majesty in Council as herein-after mentioned: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the president for the time being of his Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of his Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons, members of his Majesty's Privy Council, who shall have been president thereof or held the office of Lord Chancellor of Great Britain, or shall have held any of the other offices herein-before mentioned, shall form a Committee of his Majesty's said Privy Council, and shall be styled "The Judicial Committee of the Privy Council:" provided nevertheless, that it shall be lawful for his Majesty from time to time, as and when he shall think fit, by his sign manual, to appoint any two other persons, being Privy Councillors, to be members of the said Committee.

II. And be it further enacted, that from and after the first day of June one thousand eight hundred and thirty-three all appeals or applications in prize suits and in all other suits or proceedings in the Courts of Admiralty, or Vice-Admiralty Courts, or any other Court in the plantations in America and other his Majesty's dominions or elsewhere abroad, which may now, by virtue of any law, statute, commission, or usage, be made to the High Court of Admiralty in England, or to the Lords Commissioners in Prize Cases, shall be made to his Majesty in Council, and not to the said High Court of Admiralty in England or to such Commissioners as aforesaid; and such appeals shall be made in the same manner and form and within such time wherein such appeals might, if this act had not been passed, have been made to the said High Court of Admiralty or to the Lords Commissioners in Prize Cases respectively; and that all laws or statutes now in force with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to his Majesty in Council.

III. And be it further enacted, that all appeals or complaints in the nature of appeals whatever, which either by virtue of this act, or of any law, statute, or custom, may be brought before his Majesty or his Majesty in Council from or in respect of the determination, sentence, rule, or order of any Court, Judge, or judicial officer, and all such appeals as are now pending and unheard, shall from and after the passing of this act be referred by his Majesty to the said Judicial Committee of his Privy Council, and that such appeals, causes, and matters shall be heard by the said Judicial Committee, and a report or recommendation thereon

shall be made to his Majesty in Council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by his Majesty to the whole of his Privy Council or a committee thereof (the nature of such report or recommendation being always stated in open Court).

IV. And be it further enacted, that it shall be lawful for his Majesty to refer to the said Judicial Committee for hearing or consideration any such other matters whatsoever as his Majesty shall think fit, and such committee shall thereupon hear or consider the same, and shall advise his Majesty thereon in manner aforesaid.

His Majesty may refer any other matters to Committee.

V. And be it further enacted, that no matter shall be heard, nor shall any order, report, or recommendation be made, by the said Judicial Committee, in pursuance of this act, unless in the presence of at least four members of the said committee; and that no report or recommendation shall be made to his Majesty unless a majority of the members of such Judicial Committee present at the hearing shall concur in such report or recommendation: provided always, that nothing herein contained shall prevent his Majesty, if he shall think fit, from summoning any other of the members of his said Privy Council to attend the meetings of the said committee.

No matter to be heard unless in presence of four members of the Committee, (but see 6 & 7 Vict. c. 38. s. 31.)

VI. And be it further enacted, that in case his Majesty shall be pleased, by directions under his sign manual, to require the attendance at the said committee for the purposes of this act of any member or members of the said Privy Council who shall be a Judge or Judges of the Court of King's Bench, or of the Court of Common Pleas, or of the Court of Exchequer, such arrangements for dispensing with the attendance of such Judge or Judges upon his or their ordinary duties during the time of such attendance at the Privy Council as aforesaid shall be made by the Judges of the Court or Courts to which such Judge or Judges shall belong respectively in regard to the business of the Court and by the Judges of the said three Courts, or by any eight or more of such Judges, including the chiefs of the several Courts, in regard to all other duties, as may be necessary and consistent with the public service.

In case the King directs the attendance of any Judge, a member of the Committee, the other Judges of the Court to which he belongs to make arrangements with regard to the business of the Court.

VII. And be it enacted, that it shall be lawful for the said Judicial Committee, in any matter which shall be referred to such committee, to examine witnesses by word of mouth, (and either before or after examination by deposition,) or to direct that the depositions of any witness shall be taken in writing by the registrar of the said Privy Council to be appointed by his Majesty as herein-after mentioned, or by such other person or persons, and in such manner, order, and course, as his Majesty in Council or the said Judicial Committee shall appoint and direct; and that the said registrar and such other person or persons so to be appointed shall have the same powers as are now possessed by an examiner of the High Court of Chancery or of any Court Ecclesiastical.

Evidence may be taken vivâ voce, or upon written depositions.

VIII. And be it enacted, that in any matter which shall come before the said Judicial Committee it shall be lawful for the said committee to direct that such witnesses shall be examined or re-examined, and as to such facts as to the said committee shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter; and it shall also be lawful for his Majesty in Council, on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the Court from the decision of which such appeal shall have been made, and at the same time to direct that such Court shall rehear such matter, in such form, and either generally or upon certain points only, and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as his Majesty in Council shall direct; and further, on any such remitting or otherwise, it shall be lawful for his Majesty in Council to direct that one or more feigned issue or issues shall be tried in any Court in any of his Majesty's dominions abroad, for any purpose for which such issue or issues shall to his Majesty in Council seem proper.

Committee may order any particular witnesses to be examined, and as to any particular facts, and may remit causes for rehearing.

IX. And be it enacted, that every witness who shall be examined in pursuance of this act shall give his or her evidence upon oath, or if a Quaker or Moravian upon solemn affirmation, which oath and affirmation respectively shall be administered by the said Judicial Committee and registrar, and by such other person or persons as his Majesty in Council or the said Judicial Committee shall appoint; and that every such witness who shall wilfully swear or affirm falsely, shall be deemed guilty of perjury, and shall be punished accordingly.

Witnesses to be examined on oath, and to be liable to punishment for perjury.

X. And be it enacted, that it shall be lawful for the said Judicial Committee to direct one or more feigned issue or issues to be tried in any Court of Common Law, and either at bar, before a judge of assize, or at the sittings for the trial of

Committee may direct an issue to try any fact;

may, in certain cases, direct depositions to be read at the trial of the issue ;

may make such orders as to the admission of evidence as are made by the Court of Chancery ;

and may direct new trials of issues.

Powers, &c. of 13 G. 3. c. 63. and 1 W. 4. c. 22. with regard to examination of witnesses applied to the Judicial Committee.

Costs to be in the discretion of the Committee.

Decrees to be enrolled.

Committee may refer matters to registrar in same manner as matters are by Court of Chancery referred to a Master.

The King may appoint registrar.

Attendance of witnesses, and production of papers, &c., may be compelled by subpoena.

issues in London or Middlesex, and either by a special or common jury, in like manner and for the same purpose as is now done by the High Court of Chancery.

XI. And be it enacted, that it shall be in the discretion of the said Judicial Committee to direct that, on the trial of any such issue, the depositions already taken of any witness who shall have died, or who shall be incapable to give oral testimony, shall be received in evidence ; and further, that such deeds, evidences, and writings shall be produced, and that such facts shall be admitted, as to the said committee shall seem fit.

XII. And be it enacted, That it shall be lawful for the said Judicial Committee to make such and the like orders respecting the admission of persons, whether parties or others, to be examined as witnesses upon the trial of any such issues as aforesaid, as the Lord High Chancellor or the Court of Chancery has been used to make respecting the admission of witnesses upon the trial of issues directed by the Lord Chancellor or the Court of Chancery.

XIII. And be it enacted, That it shall be lawful for the said Judicial Committee to direct one or more new trial or new trials of any issue, either generally or upon certain points only ; and that in case any witness examined at a former trial of the same issue shall have died, or have, through bodily or mental disease or infirmity, become incapable to repeat his testimony, it shall be lawful for the said committee to direct that parol evidence of the testimony of such witness shall be received.

XIV. And whereas by an act passed in the thirteenth year of his late Majesty King George the Third, and intituled "An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company, as well in India as in Europe," and by an act passed in the first year of the reign of his present Majesty, and intituled "An Act to enable the Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise," certain powers are given to certain Courts therein mentioned to enforce, and provisions are made for the examination of witnesses by commission, upon interrogatories and otherwise : be it therefore further enacted, That all the powers and provisions contained in the two last-mentioned acts, or either of them, shall extend to and be exercised by the said Judicial Committee in all respects as if such committee had been therein named as one of his Majesty's Courts of Law at Westminster.

XV. And be it enacted, That the costs incurred in the prosecution of any appeal or matter referred to the said Judicial Committee, and of such issues as the same committee shall under this act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid registrar, or such other person or persons, to be appointed by his Majesty in Council or the said Judicial Committee, and in such manner as the said committee shall direct.

XVI. And be it further enacted, That the orders or decrees of his Majesty in Council made, in pursuance of any recommendation of the said Judicial Committee, in any matter of appeal from the judgment or order of any Court or Judge, shall be enrolled, for safe custody, in such manner, and the same may be inspected and copies thereof taken under such regulations, as his Majesty in Council shall direct.

XVII. And be it further enacted, That it shall be lawful for the said committee to refer any matters to be examined and reported on to the aforesaid registrar, or to such other person or persons as shall be appointed by his Majesty in Council or by the said Judicial Committee, in the same manner and for the like purposes as matters are referred by the Court of Chancery to a Master of the said Court ; and that for the purposes of this act the said registrar and the said person or persons so to be appointed shall have the same powers and authorities as are now possessed by a Master in Chancery.

XVIII. And be it further enacted, That it shall be lawful for his Majesty, under his sign manual, to appoint any person to be the registrar of the said Privy Council, as regards the purposes of this act, and to direct what duties shall be performed by the said registrar.

XIX. And be it further enacted, That it shall be lawful for the President for the time being of the said Privy Council to require the attendance of any witnesses, and the production of any deeds, evidences, or writings, by writ to be issued by such President in such and the same form, or as nearly as may be, as that in which a writ of subpoena ad testificandum or of subpoena duces tecum is now issued by his Majesty's Court of King's Bench at Westminster ; and that every person disobeying any such writ so to be issued by the said President shall be considered as in contempt of the said Judicial Committee, and shall also be liable to such and the same penalties and consequences as if such writ had issued

out of the said Court of King's Bench, and may be sued for such penalties in the said Court.

XX. And be it further enacted, That all appeals to his Majesty in Council shall be made within such times respectively within which the same may now be made, where such time shall be fixed by any law or usage, and where no such law or usage shall exist, then within such time as shall be ordered by his Majesty in Council; and that, subject to any right subsisting under any charter or constitution of any colony or plantation, it shall be lawful for his Majesty in Council to alter any usage as to the time of making appeals, and to make any order respecting the time of appealing to his Majesty in Council.

Time of appealing.

XXI. And be it further enacted, That the order or decree of his Majesty in Council on any appeal from the order, sentence, or decree of any Court of justice in the East Indies, or of any colony, plantation, or other his Majesty's dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as his Majesty in Council shall, on the recommendation of the said Judicial Committee, direct; and it shall be lawful for his Majesty in Council, on such recommendation, by order, to direct that such Court of justice shall carry the same into effect accordingly, and thereupon such Court of justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to his Majesty in Council: Provided always, that nothing in this act contained shall impeach or abridge the powers, jurisdiction, or authority of his Majesty's Privy Council as heretofore exercised by such Council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this act, and for the purposes aforesaid.

Decrees for Courts abroad to be carried into effect as the King in Council shall direct.

Act not to abridge powers of Privy Council.

XXII. And whereas various appeals to his Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several presidencies of Calcutta, Madras, and Bombay in the East Indies, have been admitted by the said Courts, and the transcripts of the proceedings in appeal have been from time to time transmitted under the seal of the said Courts, through the United Company of Merchants in England trading to the East Indies, to the office of his Majesty's said Privy Council, but the suitors in the causes so appealed have not taken the necessary measures to bring on the same to a hearing: be it therefore further enacted by the authority aforesaid, That it shall be lawful for his Majesty in Council to give such directions to the said United Company and other persons for the purpose of bringing to a hearing before the said committee the several cases appealed or hereafter to be appealed to his Majesty in Council from the several Courts of Sudder Dewanny Adawlut in the East Indies, and for appointing agents and counsel for the different parties in such appeals, and to make such orders for security and payment of the costs thereof, as his said Majesty in Council shall think fit; and thereupon such appeals shall be heard and reported on to his Majesty in Council, and shall be by his Majesty in Council determined in the same manner, and the judgments, orders, and decrees of his Majesty in Council thereon shall be of the same force and effect as if the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding: Provided always, that such last-mentioned powers shall not extend to any appeals from the said Courts of Sudder Dewanny Adawlut other than appeals in which no proceedings have been or shall hereafter be taken in England on either side for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut.

His Majesty may direct the East India Company to bring on appeals from the Sudder Dewanny Adawlut Courts to a hearing.

*Amended by 8 & 9 Vict. c. 30.*

XXIII. And be it enacted, That in any case where any order shall have been made on any such appeal as last aforesaid, the same shall have full force and effect, notwithstanding the death of any of the parties interested therein; but that in all cases where any such appeal may have been withdrawn or discontinued, or any compromise made in respect of the matter in dispute, before the hearing thereof, then the determination of his Majesty in Council in respect of such appeal shall have no effect.

Orders made on such appeals to have effect notwithstanding death of parties, &c.

XXIV. And be it further enacted, That it shall be lawful for his Majesty in Council from time to time to make any such rules and orders as may be thought fit for the regulating the mode, form, and time of appeal to be made from the decisions of the said Courts of Sudder Dewanny Adawlut, or any other Courts of Judicature in India or elsewhere to the eastward of the Cape of Good Hope (from the decisions of which an appeal lies to his Majesty in Council), and in like manner from time to time to make such other regulations for the preventing delays in the making or hearing such appeals, and as to the expenses attending the said appeals, and as to the amount or value of the property in respect of which any such appeal may be made.

His Majesty empowered to make orders for regulating the mode, &c. of such appeals.

His Majesty empowered to appoint one of the Barons of the Court of Exchequer to sit in Equity in the absence of the Chief Baron.

*But see 5 Vict. c. 5., transferring the Equity Jurisdiction of the Court of Exchequer to the Court of Chancery.*

Two Judges of the Court of Bankruptcy to act for the chief Judge of the Court of Review during his attendance at the said Judicial Committee.

Powers of act 57 G. 3. extended to this act.

Power of enforcing decrees.

Registrar of Court of Admiralty may attend the said Judicial Committee.

XXV. And whereas by an act of parliament passed in the fifty-seventh year of the reign of his Majesty King George the Third, intituled "An Act to facilitate the hearing and determining of Suits in Equity in his Majesty's Court of Exchequer at Westminster," it was enacted that the Lord Chief Baron of the said Court for the time being should have power to hear and determine all causes, matters, and things which should be at any time depending in the said Court of Exchequer as a Court of Equity, and that if the said Lord Chief Baron of the Court of Exchequer should by sickness or any other unavoidable cause be prevented from sitting on the equity side of the said Court for the purposes in the said act mentioned, then it should and might be lawful for his Majesty and his successors to nominate and appoint from time to time by warrant under the royal sign manual, revocable at pleasure, any one other of the Barons of the degree of the Coif of the said Court for the time being, to hear and determine the causes, matters, and things in the said act mentioned: And whereas by reason of the great increase of business on the common law or plea side of the said Court of Exchequer the Lord Chief Baron is prevented from giving so much time as heretofore to the sittings on the Equity side of the said Court, and the sittings on such equity side of the said Court being necessarily suspended during the absence of the Lord Chief Baron, great inconvenience is thereby sustained by the suitors and practitioners on the equity side of the said Court: And whereas the Lord Chief Baron may by this act become liable to the performance of other additional duties unconnected with the said Court of Exchequer, and it is desirable that the said Court of Exchequer should sit as a Court of Equity without any unnecessary interruption, for the purpose of hearing and determining causes, matters, and things depending in the said Court as a Court of Equity: And whereas doubts have arisen whether or not the above-recited act extends to cases of the Lord Chief Baron being prevented from sitting by the performance of judicial duties elsewhere; be it therefore declared and enacted, That it shall and may be lawful for his Majesty and his successors to nominate and appoint from time to time by warrant under the royal sign manual, revocable at pleasure, any one of the Barons of the degree of the Coif of the said Court for the time being to hear and determine (on such days as the Lord Chief Baron of the said Court shall sit on the common law side of the said Court during the term, or shall preside at the sittings at Nisi Prius in London or Middlesex after the term, or shall attend at the Judicial Committee of his Majesty's Privy Council under the provisions of this act) all causes, matters, and things which shall at any time be depending in the said Court of Exchequer as a Court of Equity.

XXVI. And be it further enacted, That during the absence of the Chief Judge in Bankruptcy from the Court of Review established by virtue of an act passed in the first and second year of his present Majesty intituled "An Act to establish a Court in Bankruptcy," by reason of his attendance at the said Judicial Committee by virtue of this act, any two Judges of the said Court shall and may form a Court of Review in Bankruptcy, and shall and may make, do, and execute all orders, acts, matters, powers, and things whatsoever which by virtue of the said act the Judges of the said Court or any three of them are authorized to make, do, or execute, and in all respects whatsoever as if three of the said Judges were present, except that nothing herein contained shall authorize any two Judges of the said Court to hear and determine any matter brought under the review of the said Court by way of appeal from the determination or decision of any Commissioner or Subdivision Court appointed by virtue of the said act.

XXVII. And be it further enacted, That all the clauses and provisions contained in the said act of parliament which relate to the Baron nominated and appointed under that act shall apply and be extended to the Baron nominated and appointed under the authority of this act.

XXVIII. And be it enacted, That the said Judicial Committee shall have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances, and that his Majesty in Council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees, and orders, as are now exercised by the High Court of Chancery or the Court of King's Bench (and both *in personam* and *in rem*). [*The remainder of this section is repealed by 6 & 7 Vict. c. 38. s. 6.*]

XXIX. And be it further enacted, That, subject to such orders as his Majesty in Council shall from time to time make, it shall be lawful for the present registrar of the High Court of Admiralty, if he shall so think fit, either in person or by deputy, to attend the hearing by the said Judicial Committee of all causes and appeals which, but for this act or the said last-mentioned act, would have been heard by any Court or Commission which such registrar was entitled to



attend, in person or by deputy, by virtue of his offices of registrar of the High Courts of Admiralty, Delegates, and Appeals for Prizes, and likewise, subject to any order of his Majesty in Council, to transact, perform, and do all acts, matters, and things that shall be found necessary, or have heretofore been done by the said registrar or his deputies in respect of such causes and appeals.

XXX. And be it enacted, That two members of his Majesty's Privy Council who shall have held the office of judge in the East Indies or any of his Majesty's dominions beyond the seas, and who, being appointed for that purpose by his Majesty, shall attend the sittings of the Judicial Committee of the Privy Council, shall severally be entitled to receive over and above any annuity granted to them in respect of having held such office as aforesaid, the sum of four hundred pounds for every year during which they shall so attend as aforesaid, as an indemnity for the expense which they may thereby incur; and such sum of four hundred pounds shall be chargeable upon and paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Retired judges attending the Judicial Committee to receive an allowance.

XXXI. Provided always, and be it enacted, That nothing herein contained shall be held to impeach or render void any treaty or engagement already entered into by or on behalf of his Majesty, or be taken to restrain his Majesty from acceding to any treaty, with any foreign prince, potentate, or power, in which treaty it shall be stipulated that any person or persons other than the said Judicial Committee shall hear and finally adjudicate appeals from his Majesty's Courts of Admiralty in causes of prize, but that the judgments, decrees, and orders of such other person or persons so appointed by treaty shall be of the same force and effect of which they would respectively have been if this act had not been passed.

Nothing herein shall prevent the King's acceding to treaties appointing certain persons to hear prize appeals.

#### No. IV.

6 & 7 Vict. c. 38. (28th July, 1843.)

*An Act to make further Regulations for facilitating the hearing Appeals and other Matters by the Judicial Committee of the Privy Council.*

WHEREAS it has been found expedient to make further regulations for hearing and making report to her Majesty in appeals and other matters referred to the Judicial Committee of the Privy Council, and for the more effectual appointment of surrogates in ecclesiastical and maritime causes of appeal, and for making orders or decrees incidental to such causes of appeal, and for the punishment of contempts, and compelling appearances and enforcement of judgments, orders, and decrees of her Majesty in Council, or of the said Judicial Committee or their surrogates, in such causes of appeal: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in any appeal, application for prolongation or confirmation of letters patent, or other matter referred or hereafter to be referred by her Majesty in Council to the Judicial Committee of the Privy Council, it shall be lawful for her Majesty, by Order in Council or special direction under her royal sign manual, having regard to the nature of the said appeal or other matter, and in respect of the same not requiring the presence of more than three members of the said committee, to order that the same be heard, and when so ordered it shall be lawful that the same shall be accordingly heard by not less than three of the members of the said Judicial Committee, subject to such other rules as are applicable, or under this act may be applicable, to the hearing and making report on appeals and other matters by four or more of the members of the said Judicial Committee.

Appeals, &c. may be heard by not less than three members of the Judicial Committee of the Privy Council under a special order of her Majesty.

II. And be it enacted, That in respect of all incidents, emergents, dependents, and things adjoined to, arising out of, or connected with appeals from any Ecclesiastical Court, or from any Admiralty or Vice-Admiralty Court, (save in giving a definitive sentence, or any interlocutory decree having the force and effect of a definitive sentence,) the said Judicial Committee and their surrogates shall have

Powers of the Judicial Committee and their surrogates in respect to appeals from

Ecclesiastical  
and Admiralty  
Courts.

2 & 3 W. 4.  
c. 92.

3 & 4 W. 4.  
c. 41.

Who to be  
surrogates and  
examiners of  
the Judicial  
Committee in  
Ecclesiastical  
and Admiralty  
appeals,

Past proceed-  
ings of surro-  
gates of the  
Judicial Com-  
mittee valid,  
notwithstand-  
ing certain  
informalities.

Manner of con-  
ducting appeals  
before the  
Judicial Com-  
mittee.

Punishing con-  
tempt. com-  
pelling appear-  
ances, enforcing  
judgments, &c.  
in causes of  
appeal.

3 & 4 Viet.  
c. 65.

Orders, &c.  
may be en-  
forced by  
sequestration  
against certain

full power, subject to such rules, orders, and regulations as shall from time to time be made by the said Judicial Committee, (with the approval of her Majesty in Council,) to make all such interlocutory orders and decrees, and to administer all such oaths and affirmations, and to do all such things as may be necessary, or the Judges of the Courts below appealed from or their surrogates in the cases appealed, or the Judges of the Courts appealed to or their surrogates, or the Lords Commissioners of Appeals in prize causes or their surrogates, and the Judges Delegate or their con-delegates under commissions of appeal under the great seal in ecclesiastical and maritime causes of appeal, would respectively have had before an act passed in the third year of the reign of his late Majesty, intituled "An Act for transferring the powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council," and another act passed in the following session of parliament, intituled "An Act for the better Administration of Justice in his Majesty's Privy Council," were passed.

III. And be it enacted, That the surrogates and examiners of the Arches Court of Canterbury and the High Court of Admiralty of England, and such persons as shall from time to time be appointed surrogates or examiners of the said Courts, shall be by virtue of this act surrogates and examiners respectively of the Judicial Committee of the Privy Council in all causes of appeal from Ecclesiastical Courts and from any Admiralty or Vice-Admiralty Court.

IV. And be it enacted, That all orders, decrees, and things heretofore done and expedited in such causes of appeal by the surrogates appointed by the said Judicial Committee of the Privy Council, shall be deemed to be valid and effectual, if otherwise lawfully done and expedited, notwithstanding any informality or want of authority in respect to the same in the Orders of his late Majesty in Council of the fourth day of February one thousand eight hundred and thirty-three, of the said Judicial Committee of the fifth day of February one thousand eight hundred and thirty-three, of the Order of his late Majesty in Council of the ninth day of December one thousand eight hundred and thirty-three, of an order of the said Judicial Committee of the tenth day of December one thousand eight hundred and thirty-three, and an Order of his late Majesty in Council of the twelfth day of August one thousand eight hundred and thirty-five.

V. And be it enacted, That, subject to such rules and regulations as may from time to time be made by the said Judicial Committee with the approval of her Majesty in Council, and save and in so much as the practice thereof may be varied by the said acts of the reign of his late Majesty or by this act, the said causes of appeal to her Majesty in Council shall be commenced within the same times, and conducted in the same form and manner, and by the same persons and officers, as if appeals in the same causes had been made to the Queen in Chancery, the High Court of Admiralty of England, or the Lords Commissioners of Appeals in prize causes respectively; and all things otherwise lawfully done and expedited in the said causes of appeal by the registrar of the High Court of Admiralty of England, his deputy or deputies, in consequence of the passing of the said acts of the reign of his late Majesty, shall be deemed to be valid to all intents whatsoever.

VI. *Repeals so much of 3 & 4 W. 4. c. 41. s. 28. as confers on the Judicial Committee and his Majesty in Council the same powers to punish contempts, &c., as are by 2 & 3 W. 4. c. 93. given to Courts Ecclesiastical.*

VII. And be it enacted, That for better punishing contempts, compelling appearances, and enforcing judgments of her Majesty in Council, and all orders and decrees of the said Judicial Committee or their surrogates, in all causes of appeal from Ecclesiastical Courts and from Admiralty or Vice-Admiralty Courts, her Majesty in Council and the said Judicial Committee and their surrogates shall have the same powers, by attachment and committal of the person to any of her Majesty's gaols, and subsequent discharge of any person so committed, as by any statute, custom, or usage belong to the Judge of the High Court of Admiralty of England; and the said Judicial Committee shall have the same immunities and privileges as are conferred on the Judge of the High Court of Admiralty of England under an act passed in the fourth year of the reign of her Majesty, intituled "An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England," as fully as if the same had been thereby expressly given to the said Judicial Committee.

VIII. And be it enacted, That in all causes of appeal to her Majesty in Council from Ecclesiastical Courts, and from Admiralty or Vice-Admiralty Courts, in which any person duly monished or cited or required to comply with any lawful order or decree of her Majesty in Council, or of the said Judicial Committee or their surrogates, and neglecting or refusing to pay obedience to such lawful order

or decree, or committing any contempt of the process under the seal of her Majesty in ecclesiastical and maritime causes, shall reside out of the dominions of her Majesty, or shall have privilege of peerage, or shall be a lord of parliament or a member of the House of Commons, it shall be lawful for the said Judicial Committee or their surrogates to pronounce such person to be contumacious and in contempt, and after he shall have been so pronounced contumacious and in contempt to cause process or sequestration to issue under the said seal of her Majesty against the real and personal estate, goods, chattels, and effects, wheresoever lying within the dominions of her Majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same, and payment of the expences attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect to such real and personal estate, goods, chattels, and effects sequestrated thereby, as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due or into the registry of the High Court of Admiralty and Appeals for the benefit of those who may be ultimately entitled thereto.

persons pronounced contumacious and in contempt.

*Extended by  
7 & 8 Vict.  
c. 69. s. 12.*

IX. And be it enacted, That all inhibitions, citations, monitions, and other instruments incidental to or arising out of such causes of appeal shall be issued in the name of her Majesty, and under seal of her Majesty in ecclesiastical and maritime causes, and shall be of full authority in all places throughout the dominions of her Majesty.

Inhibitions, &c. to be in her Majesty's name, and of force throughout the British dominions.

X. And be it enacted, That in all appeals in ecclesiastical and maritime causes to her Majesty in council it shall be lawful for her Majesty in council, and the said Judicial Committee or their surrogates, at the petition of any person interested in the same, to decree monitions for the transmission of any sum or sums of money respecting which any order or decree may be made, or any questions may be depending arising out of such causes, and the proceeds of all ships or vessels, goods, and cargoes respecting which any appeals may be depending, into the registry of the High Court of Admiralty and Appeals, for the benefit of the person or persons who may be ultimately entitled thereto, or for payment thereof to the person to whom the same may be lawfully due.

Monitions for payments into the registry of the Admiralty Court under orders, &c.

XI. And be it enacted, That it shall be lawful for her Majesty, by Order in Council, to direct that all causes of appeal from Ecclesiastical Courts, and from the Vice-Admiralty Court of the Cape of Good Hope, and all Vice-Admiralty Courts to the westward thereof, in which the appeal and petition of reference to her Majesty shall have been lodged in the registry of the High Court of Admiralty and appeals within twelve calendar months from the giving or pronouncing of any order, decree, or sentence appealed from, and all causes of appeal from Vice-Admiralty Courts to the eastward of the Cape of Good Hope, in which the appeal and petition of reference to her Majesty shall have been lodged in the registry of the High Court of Admiralty and appeals within eighteen calendar months from the giving or pronouncing any order, decree, or sentence appealed from, shall be referred to the Judicial Committee of the Privy Council, and the said Judicial Committee and their surrogates shall have full power forthwith to proceed in the said appeals, and the usual inhibition and citation shall be decreed and issued, and all usual proceedings taken, as if the same had been referred to the said Judicial Committee by a special order of her Majesty in Council in each cause respectively.

All appeals from Ecclesiastical and Admiralty Courts may be referred to the Judicial Committee by an Order in Council.

XII. And be it declared and enacted, That as well the costs of defending any decree or sentence appealed from as of prosecuting any appeal, or in any manner intervening in any cause of appeal, and the costs on either side, or of any party, in the Court below, and the costs of opposing any matter which shall be referred to the said Judicial Committee, and the costs of all such issues as shall be tried by direction of the said Judicial Committee respecting any such appeal or matter, shall be paid by such party or parties, person or persons, as the said Judicial Committee shall order, and that such costs shall be taxed as in and by the said act for the better administration of justice in the Privy Council is directed respecting the costs of prosecuting any appeal or matter referred by her Majesty under the authority of the said act, save the costs arising out of any ecclesiastical or maritime cause of appeal, which shall be taxed by the registrar herein-after named, or his assistant registrar.

Costs may be awarded by the Judicial Committee and taxed.

XIII. And be it enacted, That the registrar of the High Court of Admiralty of England for the time being may be appointed by her Majesty to be registrar of her Majesty in ecclesiastical and maritime causes, and shall have power to appoint an assistant registrar, as provided by an act passed in the fourth year of the reign of her Majesty, intituled "An Act to make Provision for the Judge, Registrar, and Marshal of the High Court of Admiralty of England," and shall, during his

Appointment of registrar and assistant registrar in ecclesiastical and maritime causes.

3 & 4 Vict.  
c. 66.

Custody of  
records, &c. of  
the Court of  
Delegates and  
Appeals.

Judicial Com-  
mittee em-  
powered to  
make rules, &c.  
respecting  
practice and  
mode of pro-  
ceeding in ap-  
peals, &c.

Proviso.

Judicial Com-  
mittee of Privy  
Council to pro-  
ceed with  
causes depend-  
ing before late  
High Court of  
Delegates.

Definition of  
terms.

good behaviour, and while he shall be registrar of the said High Court of Admiralty, hold his office of registrar of her Majesty in ecclesiastical and maritime causes, and shall do all such things, and shall have the same powers and privileges in respect to the same, as belong to his predecessors in the office of registrar of his Majesty in ecclesiastical and maritime causes.

XIV. And be it enacted, that all records, muniments, books, papers, wills, and other documents remaining in the registry of the High Court of Admiralty and Appeals, appertaining to the late High Court of Delegates and Appeals for prizes, shall be and remain in the custody and possession of the said registrar of her Majesty in ecclesiastical and maritime causes.

XV. And be it enacted, That it shall be lawful for the said Judicial Committee from time to time to make such rules, orders, and regulations respecting the practice and mode of proceeding in all appeals from Ecclesiastical and Admiralty and Vice-Admiralty Courts, and the conduct and duties of the officers and practitioners therein, and to appoint such officer or officers as may be necessary for the execution of processes under the said seal of her Majesty, and in respect to all appeals and other matters referred to them, as to them shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: Provided always, that no such rules, orders, or regulations shall be of any force or effect until the same shall have been approved by her Majesty in Council.

XVI. And whereas, in certain causes which were depending before the late High Court of Delegates, certain decrees or orders were made and interposed, and are not yet fully carried into effect: And whereas, in consequence of the death of the Judges delegate, or some of them, named in the several commissions under the great seal, such decrees or orders cannot be carried into effect; be it enacted, That all such causes of appeal and complaint which were depending before the High Court of Delegates, and in which any decree, order, or thing, for the reason lastly herein-before mentioned, is outstanding and not fully ended and determined, shall be transferred to the Judicial Committee of the Privy Council; and the said Judicial Committee shall take up and proceed with the said causes in the same manner as if the same had been originally causes of appeal and complaint depending before the said Judicial Committee.

XVII. And be it enacted, That in this act all words denoting a male person shall be taken to include a female also, and all words denoting one person or thing shall be taken to include also several persons or things, unless a contrary sense shall clearly appear from the context; and that the words "Archdeacon Court of Canterbury," used in this act, shall be construed to extend to such Court as shall exercise the jurisdiction of the said Court or be substituted for the same; and that wherever the words "Ecclesiastical Court" have been used in this act the same shall be construed to extend to such Court as shall exercise the jurisdiction or any part of the jurisdiction exercised by any Ecclesiastical Court or be substituted for the same; and the words "ecclesiastical and maritime cause of appeal" shall be construed to extend to causes appealed from Ecclesiastical Courts and such Court as shall exercise the jurisdiction or any part of the jurisdiction exercised by any Ecclesiastical Court or be substituted for the same.

## No. V.

7 & 8 Vict. c. 69. (6th August, 1844.)

*An Act for amending an Act passed in the Fourth Year of the Reign of His late Majesty; intituled "An Act for the better Administration of Justice in His Majesty's Privy Council;" and to extend its Jurisdiction and Powers.*

3 & 4 W. 4.  
c. 41.

5 & 6 W. 4.  
c. 83.

WHEREAS the act passed in the fourth year of the reign of his late Majesty, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council," hath been found beneficial to the due administration of justice: And whereas another act, passed in the sixth year of the said reign, intituled "An Act to amend the Law touching Letters Patent for Inventions," hath been also

found advantageous to inventors and to the public : And whereas the Judicial Committee acting under the authority of the said acts hath been found to answer well the purposes for which it was so established by parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers : And whereas by the laws now in force in certain of her Majesty's colonies and possessions abroad no appeals can be brought to her Majesty in Council for the reversal of the judgments, sentences, decrees, and orders of any Courts of Justice within such colonies, save only of the Courts of Error or Courts of Appeal within the same, and it is expedient that her Majesty in Council should be authorized to provide for the admission of appeals from other Courts of Justice within such colonies or possessions ; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall be competent to her Majesty, by any order or orders to be from time to time for that purpose made with the advice of her Privy Council, to provide for the admission of any appeal or appeals to her Majesty in Council from any judgments, sentences, decrees, or orders of any Court of Justice within any British colony or possession abroad, although such Court shall not be a Court of Errors or a Court of Appeal within such colony or possession ; and it shall also be competent to her Majesty, by any such order or orders as aforesaid, to make all such provisions as to her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her Majesty in Council shall pronounce thereon : Provided always, that it shall be competent to her Majesty in Council to revoke, alter, and amend any such order or orders as aforesaid as to her Majesty in Council shall seem meet : Provided also, that any such order as aforesaid may be either general and extending to all appeals to be brought from any such Court of Justice as aforesaid, or special and extending only to any appeal to be brought in any particular case : Provided also, that every such general order in council as aforesaid shall be published in the London Gazette within one calendar month next after the making thereof : Provided also, that nothing herein contained shall be construed to extend to take away or diminish any power now by law vested in her Majesty for regulating appeals to her Majesty in Council from the judgments, sentences, decrees, or orders of any Courts of Justice within any of her Majesty's colonies or possessions abroad.

II. And whereas it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in which it can be satisfactorily shown that the expence of the invention hath been greater than the time now limited by law will suffice to reimburse ; be it enacted, That if any person, having obtained a patent for any invention, shall before the expiration thereof present a petition to her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expence and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by her Majesty referred to the Judicial Committee of the Privy Council, the said committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents, and if the said committee shall be of opinion, and shall so report to her Majesty, that a further period greater than seven years' extension of the said patent term ought to be granted to the petitioner, it shall be lawful for her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of his late Majesty.

III. Provided always, and be it enacted, That nothing herein contained shall prevent the said Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent her Majesty from granting an extension for such lesser term than the petition shall have prayed.

IV. And whereas doubts have arisen touching the power given by the said recited act of the sixth year of the reign of his late Majesty in cases where the patentees have wholly or in part assigned their right ; be it enacted, That it shall be lawful for her Majesty, on the report of the Judicial Committee, to grant such extension as is authorized by the said act and by this act, either to an assignee or assignees, or to the original patentee or patentees, or to an assignee or assignees and original patentee or patentees conjointly.

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Her Majesty, by Order in Council, may provide for the admission of an appeal from any colony, although there shall not be a court of error or of appeal in such colony ; and may revoke such orders.

Orders may be either general or special.

General orders to be published.

Nothing herein to affect the present powers for regulating appeals from the colonies.

On petition, her Majesty may grant an extension of patent term in certain cases.

Her Majesty may grant extension for a lesser term than that prayed.

As to extension of term where patentees have assigned their patent rights.

Disclaimer and memorandum of alteration under 5 & 6 W. 4. c. 83. may be made notwithstanding original patentee may have assigned his patent right.

Disclaimer and memorandum of alteration already made to be deemed valid.

New letters patent granted under 5 & 6 W. 4. to assignees before passing of this act declared valid.

Proviso.

Judicial Committee may appoint clerk of Privy Council to take proofs in matters referred to them.

Judicial Committee may proceed to hearing of appeals without special order of reference.

Proviso.

Judicial Committee may require notes of evidence taken in the Courts of any colony, &c. of the Crown.

Judicial Committee may make rules to be binding upon such Courts requiring Judges' notes of evidence, &c.

V. And be it enacted, That in case the original patentee or patentees hath or have departed with his or their whole or any part of his or their interest by assignment to any other person or persons, it shall be lawful for such patentee, together with such assignee or assignees, if part only hath been assigned, and for the assignee or assignees, if the whole hath been assigned, to enter a disclaimer and memorandum of alteration under the powers of the said recited act; and such disclaimer and memorandum of such alteration, having been so entered and filed as in the said recited act mentioned, shall be valid and effectual in favour of any person or persons in whom the rights under the said letters patent may then be or thereafter become legally vested; and no objection shall be made in any proceeding whatsoever on the ground that the party making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

VI. And be it enacted, That any disclaimer or memorandum of alteration before the passing of this act, or by virtue of the said recited act, by such patentee with such assignee or by such assignee as aforesaid, shall be valid and effectual to bind any person or persons in whom the said letters patent might then be or have since become vested; and no objection shall be made in any proceeding whatsoever that the party making such disclaimer or memorandum of alteration had not authority in that behalf.

VII. And be it enacted, That any new letters patent which before the passing of this act may have been granted, under the provisions of the above-recited act of the sixth year of the reign of his late Majesty, to an assignee or assignees, shall be as valid and effectual as if the said letters patent had been made after the passing of this act, and the title of any party to such new letters patent shall not be invalidated by reason of the same having been granted to an assignee or assignees: Provided always, that nothing herein contained shall give any validity or effect to any letters patent heretofore granted to any assignee or assignees where any action or proceeding in *scire facias* or suit in equity shall have been commenced at any time before the passing of this act, wherein the validity of such letters patent shall have been or may be questioned.

VIII. Provided always, and be it enacted, That in case of any matter or thing being referred to the Judicial Committee, it shall be lawful for the said committee to appoint one or other of the clerks of the Privy Council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said Judicial Committee.

IX. And be it enacted, That in case any petition of appeal whatever shall be presented, addressed to her Majesty in Council, and such petition shall be duly lodged with the clerk of the Privy Council, it shall be lawful for the said Judicial Committee to proceed in hearing and reporting upon such appeal, without any special Order in Council referring the same to them, provided that her Majesty in Council shall have, by an Order in Council in the month of November, directed, that all appeals shall be referred to the said Judicial Committee on which petitions may be presented to her Majesty in Council during the twelve months next after the making of such order; and that the said Judicial Committee shall proceed to hear and report upon all such appeals in like manner as if each such appeal had been referred to the said Judicial Committee by a special Order of her Majesty in Council: Provided always, that it shall be lawful for her Majesty in Council at any time to rescind any general order so made; and in case of such order being so rescinded all petitions of appeal shall in the first instance be preferred to her Majesty in Council, and shall not be proceeded with by the said Judicial Committee without a special order of reference.

X. And be it enacted, That it shall be lawful for the said Judicial Committee to make an order or orders on any Court in any colony or foreign settlement, or foreign dominion of the Crown, requiring the Judge or Judges of such Court to transmit to the clerk of the Privy Council a copy of the notes of evidence in any cause tried before such Court, and of the reasons given by the Judge or Judges for the judgment pronounced in any case brought by appeal or by writ of error before the said Judicial Committee.

XI. And be it enacted, That it shall and may be lawful for the said Judicial Committee to make any general rule or regulation, to be binding upon all Courts in the colonies and other foreign settlements of the Crown, requiring the Judges' notes of the evidence taken before such Court or any cause appealed, and of the reasons given by the Judges of such Court, or by any of them, for or against the judgment pronounced by such Court; which notes of evidence and reasons shall by such Court be transmitted to the clerk of the Privy Council within one calendar month next after the leave given by such Court to prosecute any appeal

to her Majesty in Council; and such order of the said committee shall be binding upon all Judges of such Courts in the colonies or foreign settlements of the Crown.

XII. And be it enacted, That in all causes of appeal to her Majesty in Council from Ecclesiastical Courts, and from Admiralty or Vice Admiralty Courts, which now are or may hereafter be depending, in which any person duly monished or cited or requested to comply with any lawful order or decree of her Majesty in Council, or of the Judicial Committee of the Privy Council or their surrogates, made before or after the passing of this act, shall neglect or refuse to pay obedience to such lawful order or decree, or shall commit any contempt of the process under the seal of her Majesty in ecclesiastical and maritime causes, it shall be lawful for the said Judicial Committee or their surrogates to pronounce such person to be contumacious and in contempt, and, after he or she shall have been so pronounced contumacious and in contempt, to cause process of sequestration to issue under the said seal of her Majesty against the real and personal estate, goods, chattels, and effects, whosoever lying within the dominions of her Majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same and payment of the expences attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect to such real and personal estates, goods, chattels, and effects sequestrated thereby, as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due, or into the registry of the High Court of Admiralty and Appeals, for the benefit of those who may be ultimately entitled thereto.

In cases of neglect to comply with Order of Council, persons so neglecting may be punished as for contempt.

## No. VI.

*The following Instructions to Privateers were issued under an Order in Council at the Commencement of the last War with France, 16th May, 1803:—*

ART. 1. *Against what and where Letters of Marque may act hostilely.*—It shall be lawful for the commanders of ships, authorized by letters of marque and reprisals for private men-of-war, to set upon by force of arms and subdue and take the men-of-war, ships and vessels, goods, wares, and merchandises belonging to the French Republic, or to any persons being subjects to the French Republic, or inhabitants within any of the territories of the French Republic, but so that no hostility be committed nor prize attacked, seized, or taken within the harbours of princes or states in amity with us, or within rivers or roads within the shot of their cannon, unless by permission of such princes or states, or their commanders or governors in chief of such places.

ART. 2. *Captures to be brought into Port.*—The commanders of the ships or vessels so authorized as aforesaid shall bring all ships, vessels, and goods which they shall seize and take into such port of England, or some other port of our dominions, as shall be most convenient for them, in order to have the same legally adjudged by our High Court of Admiralty of England, or before the Judge of any other Admiralty Court lawfully authorized within our dominions.

ART. 3. *Conduct of the Captors after the Capture is brought into Port.*—After such ships, vessels, and goods shall be taken and brought into any port the taker or one of his chief officers or some other person present at the capture, shall be obliged to bring or send, as soon as possibly may be, three or four of the principal of the company, whereof the master, supercargo, mate, or boatswain, to be always two, of every ship or vessel so brought into port before the Judge of our High Court of Admiralty of England, or his surrogate, or before the Judge of such other Admiralty Court within our dominions lawfully authorized as aforesaid, or such as shall be lawfully commissioned in that behalf, to be sworn and examined upon such interrogatories as shall tend to the discovery of the truth concerning the interest or property of such ship or ships, vessel or vessels, and of the goods, merchandise, and other effects found therein; and the taker shall be further

obliged at the time he produceth the company to be examined, and before any monition shall be issued, to bring in and deliver into the hands of the Judge of the High Court of Admiralty of England, his surrogate, or the Judge of such other Admiralty Court within our dominions lawfully authorized, or others commissioned as aforesaid, all such papers, passes, sea briefs, charter parties, bills of lading, cockets, letters, and other documents and writings, as shall be delivered up or otherwise found on board any ship; the taker or one of his chief officers or some other person who shall be present at the capture and saw the said papers and writings delivered up or otherwise found on board at the time of the capture, making oath that the said papers and writings are brought and delivered in as they were received and taken without any fraud, addition, subduction, or embezzlement whatever, or otherwise to account for the same upon oath to the satisfaction of the Court.

Art. 4. *Not to break Bulk before Judgment.*—The ships, vessels, goods, wares, merchandise and effects taken by virtue of letters of marque and reprisals as aforesaid, shall be kept and preserved, and no part of them shall be sold, spoiled, wasted, or diminished, and the bulk thereof shall not be broken before judgment be given in the High Court of Admiralty of England or some other Court of Admiralty lawfully authorized in that behalf, that the ships, goods, or merchandises are lawful prize.

Art. 5. *Privateers to assist Ships in Distress.*—If any ship or vessel belonging to us or our subjects shall be found in distress by being in fight, set upon by or taken by the enemy, or by reason of any other accident, the commanders, officers, and company of such merchant ships or vessels as shall have letters of marque and reprisals as aforesaid, shall use their best endeavours to give aid and succour to all such ship or ships, and shall to the utmost of their power labour to free the same from the enemy or any other distress.

Art. 6. *Application to the Admiralty for Letters of Marque.*—The commanders or owners of such ships and vessels, before taking out letters of marque and reprisals, shall make application in writing, subscribed with their hands, to our High Admiral of Great Britain or our Commissioners for executing that office for the time being, or the Lieutenant or Judge of the said High Court of Admiralty, or his surrogate, and shall therein set forth a particular, true, and exact description of the ship or vessel for which such letters of marque and reprisals is requested, specifying the burthen of such ship or vessel, and the number and nature of the guns and what other warlike furniture and ammunition are on board the same, to what place the ship belongs, and the name or names of the principal owner or owners of such ship or vessel, and the number of men intended to be put on board the same and for what time they are victualled, also the names of the commanders and officers.

Art. 7. *Correspondence with the Admiralty.*—The commanders of ships and vessels having letters of marque and reprisals aforesaid, shall hold and keep and are hereby enjoined to hold and keep a correspondence by all conveniences and upon all occasions with our High Admiral of Great Britain, or our Commissioners for executing that office for the time being, or their secretary, so as from time to time to render or give him or them not only an account or intelligence of their captures and proceedings by virtue of such commission, but also of whatever else shall seem unto them or be discovered and declared to them, or found out by them or by examination of or conference with any mariners or passengers of or in the ships or vessels taken, or by any other way or means whatsoever touching or concerning the designs of the enemy or any of their fleets, ships, vessels, or parties, and of the stations, seaports, and places, and of their intents therein, and what ships or vessels of the enemy bound out or home, or where cruising as they shall hear of, and of what else material in these cases may arrive at their knowledge, to the end such costs may be thereon taken and such orders given as may be requisite.

Art. 8. *What Colours a Privateer is to wear.*—No commander of any ship or vessel having a letter of marque and reprisals as aforesaid shall presume, as they will answer it at their peril, to wear any jack, pendant, or other ensign or colours usually borne by our ships, but besides the colours usually borne by merchants' ships, they shall wear a red jack with the union jack, described in the canton at the upper corner thereof, near the staff.

Art. 9. *Not to Ransom any Capture.*—No commander of any ship or vessel having a letter of marque and reprisal as aforesaid shall ransom or agree to ransom, or quit or set at liberty any ship or vessel or their cargoes which shall be seized or taken.

Art. 10. *To deliver their Prisoners to the proper Commissioners.*—All captains or



commanding officers of ships having letters of marque or reprisals shall send an account of and deliver over what prisoners shall be taken on board any prizes, to the commissioners appointed or to be appointed for the exchange of prisoners of war, or the persons appointed in the seaport towns to take charge of prisoners; and such prisoners shall be subject only to the orders, regulations, and directions of the said commissioners, and no commander or other officer of any ship having a letter of marque or reprisal as aforesaid shall presume upon any pretence whatever to ransom any prisoner.

Art. 11. *Commission forfeited for acting contrary hereto.*—In case the commander of any ship having a letter of marque and reprisal as aforesaid shall act contrary to these instructions, or any such further instructions of which he shall have due notice, he shall forfeit his commission to all intents and purposes, and shall, together with his bail, be proceeded against according to law, and be condemned to costs and damages.

Art. 12. *Copies of Journals.*—All commanders of ships and vessels having letters of marque and reprisals shall by every opportunity send exact copies of their journals to the Secretary of the Admiralty, and proceed to the condemnation of the prizes as soon as may be, and without delay.

Art. 13. *To observe all Orders.*—Commanders of ships and vessels having letters of marque and reprisals shall, upon due notice being given to them, observe all such other instructions and orders as we shall think fit to direct from time to time for the better carrying on this service.

Art. 14. *Violating these Instructions.*—All persons who shall violate these or any other of our instructions shall be severely punished, and also required to make full reparation to persons injured contrary to our instructions, for all damages they shall sustain by any capture, embezzlement, demurrage, or otherwise.

Art. 15. *Bail to be given.*—Before any letter of marque or reprisal for the purposes aforesaid shall issue under seal bail shall be given with sureties before the Lieutenant and Judge of our High Court of Admiralty of England or his surrogate, in the sum of 3000*l.* sterling, if the ship carries above 150 men, and if a less number, in the sum of 1500*l.* sterling, which bail shall be to the effect and in the form following:—

WHICH day, time, and place personally appeared \_\_\_\_\_ and  
 \_\_\_\_\_ who submitting themselves to the jurisdiction of the High  
 Court of Admiralty of England, obliged themselves, their heirs, executors, and  
 administrators, unto our sovereign lord the King, in the sum of \_\_\_\_\_ of lawful  
 money of Great Britain to this effect; that is to say, that whereas  
 \_\_\_\_\_ is duly authorized by letters of marque and reprisals with the ship  
 called the \_\_\_\_\_ of the burthen of about \_\_\_\_\_ tons, whereof he  
 the said \_\_\_\_\_ goeth master by force of arms to attack, surprise,  
 seize and take all ships and vessels, goods, wares, and merchandise, chattels and  
 effects belonging to the French Republic or to any persons being subjects of the  
 French Republic, or inhabiting within any of the territories of the French Re-  
 public, excepting only within the harbours or roads within shot of the cannon of  
 princes and states in amity with his Majesty: and whereas, he the said  
 \_\_\_\_\_ hath a copy of certain instructions approved of and passed by his  
 Majesty in Council, as by the tenor of the said letters of marque and reprisals,  
 and instructions thereto relating more at large appeareth; if therefore nothing be  
 done by the said \_\_\_\_\_ or any of his officers, mariners, or company  
 contrary to the true meaning of the said instructions, and of all other instructions  
 which may be issued in like manner hereafter, and whereof due notice shall be  
 given him, but that such letters of marque and reprisals aforesaid, and the said  
 instructions, shall in all particulars be well and duly observed and performed, as  
 far as they shall the said ship, master, and company any way concern; and if they  
 shall give full satisfaction for any damage or injury which shall be done by them  
 or any of them to any of his Majesty's subjects or of foreign states in amity with  
 his Majesty; and also shall duly and truly pay or cause to be paid to his Majesty  
 the customers or officers appointed to receive the same for his Majesty, the  
 usual customs due to his Majesty of and for all ships and goods so as aforesaid  
 taken and adjudged as prize. And moreover, if the said  
 \_\_\_\_\_ shall not take any ship or vessel or any goods or merchandise belonging to the  
 enemy, or otherwise liable to confiscation through consent or clandestinely, or by  
 collusion, by virtue, colour, or pretence of his said letters of marque and reprisals;  
 that then this bail shall be void and of none effect; and unless they shall so do,  
 they do all hereby severally consent that execution shall issue forth against them,  
 their heirs, executors, and administrators, goods and chattels, wheresoever the

same may be found, to the value of the sum of \_\_\_\_\_ pounds before mentioned; and in testimony, of the truth thereof they have hereunto subscribed their names.

By his Majesty's command,  
(Signed)

PELHAM.

*Note.* — Certain additional instructions to privateers will be found in appendices I, II., III., and VIII., to 2 C. Rob. Adm. Rep.

## No. VII.

### PRIZE PROCLAMATION.

*A Proclamation as to the Distribution of Proceeds of Prize, Revenue, Navigation, Slave, and other Seizures, and of Awards of Salvage among Her Majesty's Ships.*

#### VICTORIA R.

WHEREAS by our Order in Council of this day's date we were graciously pleased, for the reasons therein contained, to annul the royal proclamation of his late Majesty King William the Fourth, of the third day of February one thousand eight hundred and thirty-six, directing that distribution should be made of the net proceeds of prizes captured from the enemy, of captures and seizures under the several acts passed relating to the revenues of customs, and to trade and navigation, for the abolition of the slave trade, and for the capture and destruction of piratical vessels, and of the rewards conferred for the same, *as well as of awards and allowances of salvage granted to the officers and men of ships and vessels of war when not otherwise specially apportioned by the terms of the respective awards and allowances*\*, according to the scheme therein set forth; and it is expedient that provision should be made by us for the future distribution of such proceeds or rewards; we do make known to all our loving subjects, and all others whom it may concern, by this our proclamation, by and with the advice and consent of our Privy Council, that our royal will and pleasure is, and we do hereby direct, that the distribution of such proceeds and rewards shall be made in the following manner; *videlicet* —

That flag officers or officer, commodores of the first class, and captains of the fleet, shall have one sixteenth of the net proceeds arising from prizes captured from the enemy, and from all other captures, seizures, head moneys, grants, and bounties as aforesaid, made by the ships and vessels under his or their command, save and except in the cases herein-after submitted.

That when two flag officers shall be serving together, the chief shall have two thirds of the said one sixteenth, and the other officer shall have the remaining third part.

That when there be more than two flag officers, the chief shall receive one half of the said one sixteenth, and the remaining half shall be divided equally amongst the junior flag officers, commodores of the first class, and captains of the fleet.

That no flag officer, or commodore of the first class, or captain of the fleet, not actually present at the capture or destruction of any piratical vessel or privateers belonging to the enemy, shall be entitled to share in the distribution of any head money or bounty granted in respect of the crews of such piratical ships, vessels, or boats.

That no flag officer as aforesaid shall share in any remuneration or reward conferred or awarded as salvage, unless he shall have been actually on board the ship or vessel to which the award shall be made, or have personally aided or assisted in the transaction at the time the service was rendered.

\* The words in italics were, through inadvertence, omitted in this proclamation, but supplied in a subsequent proclamation of the 6th of July, 1846.

That no flag officer commanding in the ports of the United Kingdom shall share in the proceeds of prizes captured from the enemy, nor in other captures or seizures as aforesaid, made by ships or vessels which may sail from such ports by order of the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, nor in the rewards, &c. conferred for the same.

That when ships or vessels under the command of several flag officers which belong to separate stations shall happen to be joint captures, each flag officer, under whose orders each ship or vessel may be, shall receive a portion of the flag share of one sixteenth of the net proceeds in proportion to the number of officers and men present under the command of each such flag officer; and the same regulation as to the apportionment of the flag share is to be observed when ships or vessels under orders from the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, shall be joint captors with ships or vessels under a flag or flags.

And we do hereby further direct, that the following regulations be observed in respect to the distribution of the remaining portion of the net proceeds of prizes, captures, seizures, and rewards before mentioned (after the deduction of the flag share of one sixteenth), or of the whole amount of such net proceeds in the cases herein-before provided, where no flag officer shall be entitled to share.

First, that the officers and men composing the complements of our ships and vessels be distributed into thirteen classes, and that each officer and man and boy who shall have been actually on board at the time of any such capture, seizure, &c. as aforesaid, shall receive such number or portion of shares as are expressed to each class respectively in the following table:—

First class: commodores of the second class, captains, field officers of marines or land forces above the rank of major, when doing duty as field officers above the rank of major, one hundred shares.

Second class: \* commanders, medical inspectors of hospitals and fleets, field officers of marines or land forces of the rank of major, when doing duty as such, fifty shares.

Third class: secretaries to flag officers commanding in chief, deputy medical inspectors of hospitals and fleets, † sea lieutenants, † masters, captains of marines or of marine artillery, or of land forces when doing duty as such, whether having higher brevet rank or not, ten shares each.

Fourth class: chaplains, secretaries to junior flag officers and commodores of the first class, surgeons, paymasters and pursers, naval instructors, mates, lieutenants of marines, of marine artillery, or of land forces when doing duty as such, second masters, assistant surgeons, five shares each.

Fifth class: gunners, boatswains, carpenters, first engineers, clerks in charge, clerks (passed), four and a half shares each.

Sixth class: midshipmen, master's assistants, second and third class engineers, clerks, naval cadets, clerk's assistant, three shares each.

Seventh class: ship's cooks, admiral's coxswains, leading stokers, masters-at-arms, seamen's schoolmaster, sailmakers', ropemakers', gunners' mates, boatswains' mates, carpenters' mates, caulkers, blacksmiths, sergeants of marines, sergeants of marine artillery, sergeants of land forces when doing duty as such, two and a half shares each.

Eighth class: ship's corporals, captain's coxswains, quarter-masters, captains of the fore-castle, captains of the main-top, captains of the fore-top, captains of the hold, coxswains of the launch, corporals of marines, and of land forces when doing duty as such, corporals and bombardiers of marine artillery, head kroomen, pilots, two shares each.

Ninth class: sailmakers' mates, coopers', armourers', caulkers' mates, captains of the mast, captains of the after-guard, captains of the mizen-top, yeoman of signals, coxswain of pinnace, second head kroomen, paymaster and purser's steward, one and a half shares each.

Tenth class: able seamen, musicians, stokers and coal trimmers, carpenters' crew, sailmakers' crew, coopers' crew, painters, yeoman of store-rooms, flag officer's stewards, flag officer's cooks, flag officers domestics, captain's steward, captain's cook, subordinate officer's steward, subordinate officer's

\* But when a commander is not in company with a captain he is to receive seventy-five shares.

† But lieutenants or masters in command of vessels of war, and masters of the fleet, are to receive twenty shares each instead of ten.

cook, sick berth attendant, privates and fifiers of marines and land forces when doing duty as such, gunners of marine artillery, ordinary seamen, one share each.

Eleventh class : paymaster and purser's steward's mates, cook's mates, barbers, landsmen, kroomen, three fourths of a share each.

Twelfth class : boys of first class, half a share each.

Thirteenth class : boys of second class, three eighths of a share each.

Seamen gunners to share in all captures, rewards, &c. as aforesaid, in the class immediately above that of the class in which their rating is mentioned.

That in all cases in which supernumeraries, whether officers or men, shall be ordered to do duty on board any of our ships by the Lord High Admiral, or by our Commissioners for executing the office of Lord High Admiral, or by other proper authority, (the orders of the captain or commander, if no senior be present, to be deemed sufficient authority,) they shall share according to the class of the ranks or ratings which they hold in the service, if not ordered to do duty in a higher capacity. All persons borne on board our ships merely as passengers, whether officers or others, and who may be present and not decline to render general assistance in any action that may occur in making any capture or seizure, shall be entitled to share in the eleventh class if above the age of twenty, and in the thirteenth if below that age.

And that in the event of any difficulty arising in respect to the regulations hereby proposed, or any case should occur not herein provided for, or not sufficiently provided for, we are pleased to authorize the Lord High Admiral, or our Commissioners for executing the office of Lord High Admiral for the time being, to issue such directions thereupon as may appear just and expedient : and that such directions shall be considered final, and have the same force and effect as if specially provided for in our royal proclamation.

Provided always, that the distribution herein before proposed to be made or directed to be made, shall not be construed to affect any captures, seizures, &c. made within three calendar months from the day of our royal proclamation, nor any captures, seizures, &c. which shall be made after that day, and which shall be condemned or adjudged in any of our Courts of Vice-Admiralty, or any Court of Mixed Commission, before notice of our royal proclamation shall have been received by the Vice-Admiralty Court or Court of Mixed Commission in which such condemnation or adjudication shall pass : and we do hereby further direct, that the proceeds of all such captures, seizures, &c. made within three months from the day of the date of this our royal proclamation, or which shall be made after the date of this our royal proclamation, and which shall be condemned or adjudged in any of our Courts of Vice-Admiralty, or any Court of Mixed Commission, antecedent to the notice of this our royal proclamation having been received in such Courts, together with all rewards aforesaid, shall continue to be distributed in the proportions and manner directed in and by his said late Majesty's said royal proclamation, dated the third day of February one thousand eight hundred and thirty-six.

Given at our Court at Buckingham Palace, this nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-six, and in the ninth year of our reign.

God save the Queen.

## No. VIII.

*A Proclamation, declaring what Ensigns or Colours shall be borne at Sea in Merchant Ships or Vessels belonging to any of his Majesty's Subjects of the United Kingdom of Great Britain and Ireland, and the Dominions thereunto belonging.\**

GEORGE R.

WHEREAS by the first articles of union of the kingdoms of Great Britain and Ireland, as the same have been ratified and confirmed by two acts of parliament,

\* In pursuance of the first article of the union between England and Scotland, there was a similar proclamation, from which, as to the form of words, this appears to have been copied.

the one made in our parliament of Great Britain, and the other in our parliament of Ireland, it was provided, that the ensigns, armorial flags, and banners of our United Kingdom of Great Britain and Ireland should be such as we should appoint by our royal proclamation, under the great seal of our said United Kingdom; and whereas we have, by our royal proclamation dated this day, appointed and declared that the arms or ensigns armorial of the said United Kingdom should be as therein expressed; and whereas, according to ancient usage, the ensigns, flags, jacks, and pendants worn by our ships, and appointed as a distinction for the same, ought not to be worn on board any ship or vessel belonging to any of our subjects, so that our ships and those of our subjects may be easily distinguished and known: we have therefore thought fit, by and with the advice of our Privy Council, to order and appoint the ensign, described on the side or margin hereof, to be worn on board all ships or vessels belonging to any of our subjects whatsoever; and to issue this our royal proclamation to notify the same to all our loving subjects, hereby strictly charging and commanding the masters of all merchant ships and vessels belonging to any of our subjects, whether employed in our service or otherwise, and all other persons whom it may concern, to wear the said ensign on board their ships or vessels: and to the end that none of our subjects may presume on board their ships to wear our flags, jacks, and pendants, which, according to ancient usage, have been appointed as a distinction to our ships, or any flags, jacks, or pendants, in shape and mixture of colours so far resembling ours as not to be easily distinguished therefrom: we do, with the advice of our Privy Council, hereby strictly charge and command all our subjects whatsoever, that they do not presume to wear in any of their ships or vessels, our jack, commonly called "The Union Jack," nor any pendants, nor any such colours as are usually borne by our ships, without particular warrant for their so doing from us, or our High Admiral of Great Britain, or the commissioners for executing the office of High Admiral for the time being: and we do hereby also further command all our loving subjects, that without such warrant as aforesaid, they presume not to wear on board their ships or vessels any flags, jacks, pendants, or colours, made in imitation of or resembling ours, or any kind of pendant whatsoever, or any other ensign than the ensign described on the side or margin hereof, which shall be worn instead of the ensign before this time usually worn in merchant ships; saving, that for the better distinction of such ships as shall have commissions of letters of mart or reprisals against the enemy, and any other ships or vessels which may be employed by the principal officers and commissioners of our navy, the principal officers of our ordnance, the commissioners for victualling our navy, the commissioners for our customs and excise, and the commissioners for transportation for our service, relating particularly to those offices, our royal will and pleasure is, that all such ships as have commissions of letters of mart or reprisals, shall, besides the colours or ensign hereby appointed to be worn by merchant ships, wear a red jack with a union jack, described in a canton at the upper corner thereof next the staff: and that such ships and vessels as shall be employed for our service by the principal officers and commissioners of our navy, the principal officers of our ordnance, the commissioners for victualling our navy, the commissioners for our customs and excise, and the commissioners for transportation for our service, relating particularly to those offices, shall wear a red jack with a union jack in a canton at the upper corner thereof next the staff as aforesaid, and in the other part of the said jack shall be described the seal used in such of the respective offices aforesaid by which the said ships and vessels shall be employed. And we do strictly charge and command, that none of our loving subjects do presume to wear any of the said distinction-jacks, unless they shall have commissions of letters of mart or reprisals, or be employed in our service by any of the before-mentioned officers. And we hereby require our High Admiral and commissioners for executing the office of High Admiral, the governors of our forts and castles, the officers of our customs, and the commanders or officers of any of our ships for the time being, upon their meeting with, or otherwise observing any ships or vessels belonging to any of our subjects, neglecting to wear the ensign hereby appointed to be borne as aforesaid, or wearing any flag, pendant, jack, or ensign, contrary hereunto, whether at sea or in port, not only to seize, or cause to be forthwith seized, such flag, pendant, jack, or ensign, worn contrary to our royal will and pleasure herein expressed, but also to return the names of such ships and vessels neglecting to wear the ensign hereby appointed, or wearing any flag, pendant, jack, or ensign, contrary hereunto, together with the names of their respective masters or commanders, unto our High Admiral, or commissioners for executing the office of High Admiral, or the Judge of our High Court of Admiralty for the time being, to the end that all persons offending

may be duly punished for the same. And we do hereby command and enjoin the Judge and Judges of our High Court of Admiralty for the time being, that they make strict enquiry concerning all such offenders, and cause them to be duly punished : and all Vice-Admirals, and Judges of the Vice-Admiralties, are hereby also required to proceed in the like manner, within the several ports and places belonging to their respective precincts. And our further pleasure is, that this proclamation shall take place according to the times hereafter mentioned; *videlicet*, for all ships in the Channel or British Seas, and in the North Seas, after twelve days from the date of these presents ; and from the mouth of the Channel unto Cape Saint Vincent, after six weeks from the date of these presents ; and beyond the Cape, and on this side the Equinoctial Line, as well in the Ocean and Mediterranean as elsewhere, after ten weeks from the date of these presents ; and beyond the Line, after the space of eight months from the date of these presents.

Given at our Court at St. James's, the first day of January, one thousand eight hundred and one, in the forty-first year of our reign.

### No. IX.

#### ORDER IN COUNCIL.

*Dated the 11th August, 1842.*

WHEREAS there was this day read at the Board a representation from the Judicial Committee of the Privy Council, dated the 10th August instant, and in the words following, viz. : " The Lords of the Judicial Committee having taken into consideration the scale on which the costs of appeals and other matters referred by your Majesty to this Committee are usually taxed by the Masters of the Court of Queen's Bench, or other persons to whom your lordships have from time to time referred the same, their lordships agree humbly to represent to your Majesty that it is expedient that the scale of costs hitherto allowed in the said proceedings before this Committee should be reduced ; and their lordships recommend that, provisionally and until further consideration, such costs in all appeals or matters not being appeals from the Courts of Ecclesiastical or Admiralty Jurisdiction should be taxed and allowed by all such taxing officers as shall hereafter be directed to ascertain and report the same to the Board, according to the schedule hereunto annexed ; and that this rate of charges should be observed by solicitors conducting business before this Committee."

Her Majesty having taken this representation into consideration, was pleased, by and with the advice of her Privy Council, to approve thereof, and of what is therein recommended, and to order, and it is hereby ordered, that the same be duly and punctually observed, complied with, and carried into execution. Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

#### *Schedule of Fees above referred to.*

|  | £ | s. | d.   |
|--|---|----|------|
| Retaining fee - - - - -  | 0 | 13 | 4    |
| Perusing official copy of proceedings - - - - -  | 2 | 2  | 0    |
| (This fee to be raised at the discretion of the Clerk of Appeals.)   |   |    |      |
| Attendances at the Council Office, or elsewhere, on ordinary business, such as to enter an appeal on an appearance, to make a search, to lodge a petition or affidavit, or to retain counsel - - - - - | 0 | 10 | 0    |
| Instructions for petition of appeal - - - - -  | 0 | 10 | 0    |
| Drawing petition or case, per folio - - - - -  | 0 | 2  | 0    |
| Drawing appendix, per folio - - - - -  | 0 | 1  | 0    |
| Copying, per folio - - - - -   | 0 | 0  | 6    |
| Attendance on order of reference - - - - -   |   |    | Nil. |
| Drawing small petitions for orders, &c. - - - - -  | 0 | 10 | 0    |
| Instructions for case - - - - -  | 1 | 0  | 0    |

|   | £    | s. | d. |
|---|------|----|----|
| Attending consultation - - -                                  | 1    | 0  | 0  |
| Correcting proof sheets, per printed sheet - -                | 0    | 10 | 6  |
| Correcting foreign or India proof sheets, per printed sheet - | 1    | 1  | 0  |
| Attending on setting down for hearing - - -                   | Nil. |    |    |
| Attending clerk of council for order - - -                    | Nil. |    |    |
| Attending at council chamber on a petition - -                | 1    | 6  | 8  |
| Attending council chamber all day on appeal not called on -   | 2    | 6  | 8  |
| Attending a hearing - - -                                     | 3    | 6  | 8  |
| Attending a judgment - - -                                    | 1    | 6  | 8  |
| Sessions fee (for the legal year), equal to four term fees -  | 3    | 3  | 0  |

## Nq. X.

9 &amp; 10 Vict. c. 100. (28th August, 1846.)

*An Act for the Regulation of Steam Navigation, and for requiring Sea-going Vessels to carry Boats.*

WHEREAS it is expedient to make further provision for regulating the construction of sea-going steam-vessels, and for preventing the occurrence of accidents (so far as may be possible) in steam navigation, and for requiring sea-going vessels to carry boats: Be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall come into operation for the purposes mentioned herein on the first day of January, one thousand eight hundred and forty-seven, except where any other period of commencement is herein particularly directed.

II. And be it enacted, That all steam-vessels built of iron of one hundred tons burden or upwards, the building of which shall have been commenced after the passing of this act, shall be divided by transverse water-tight partitions, so that the fore part of the vessel shall be separated from the engine room by one of such partitions, and so that the after part of such vessel shall be separated from the engine room by another of such partitions.

III. And be it enacted, That from and after the said first day of January one thousand eight hundred and forty-seven no vessel, the tonnage of which shall be one hundred tons or upwards, shall proceed to sea from any port whatsoever unless it shall be provided with boats duly supplied with all requisites for their use, and not being fewer in number nor less in their dimensions than the number and dimensions set opposite to the limits of dimension in the following table; provided that the said limits of dimension be not considered applicable to vessels engaged in the whale fishery:—

Commencement of act.

Iron steamers of 100 tons burden and upwards to be divided by water-tight partitions.

Sea-going vessels to be provided with the number of boats and of the dimensions herein mentioned.

TABLE.

| Tonnage of Vessel.   | Number of Boats. | Long Boat, launch, or pinnace. |          | Other boats. |          |                           |          |         |          |
|----------------------|------------------|--------------------------------|----------|--------------|----------|---------------------------|----------|---------|----------|
|                      |                  | Length.                        | Breadth. | Length.      | Breadth. | Length.                   | Breadth. | Length. | Breadth. |
|                      |                  | feet.                          | ft. in.  | feet.        | ft. in.  | feet.                     | ft. in.  | feet.   | ft. in.  |
| 850 and upwards -    | 4                | 26                             | 8 0      | 24           | 7 0      | 22                        | 6 6      | 16      | 5 6      |
| 650 to 850 -         | 4                | 24                             | 7 0      | 22           | 6 6      | 18                        | 5 6      | 16      | 5 6      |
| 350 to 650 -         | 3                | 20                             | 6 6      | 18           | 5 6      | -                         | -        | 14      | 5 0      |
| 200 to 350 inclusive | 2                | 18                             | 6 0      | -            | -        | -                         | -        | 14      | 5 0      |
| 100 to 200 -         | 2                | -                              | -        | 16           | 5 6      | and a punt or small boat. |          |         |          |

Steam vessels, in addition, to have such other boats as the Admiralty may direct.

No steamer to proceed to sea without being provided with a hose.

Mode of ascertaining tonnage.

Penalties on masters, &c. neglecting to provide boats, hose, &c.

Officers of Customs not to clear out vessels not complying with the above-mentioned provisions.

Penalty on masters, &c. not observing the regulations herein contained as to passing and repassing other vessels.

Power to the Admiralty to make regulations respecting the exhibition of lights.

Such regulations to be published in the Gazette.

Vessels, &c. within twenty miles of the coast to exhibit lights at night.

and that no vessel carrying more than ten passengers shall proceed to sea on any voyage unless, in addition to the boats herein-before required, it shall also be provided with a boat fitted up as a life boat, with all requisites for its use, together with two life buoys.

IV. And be it enacted, That every steamer, the building of which shall be commenced after the passing of this act, and which shall proceed to sea with passengers, shall, in addition to the boats specified in the foregoing table, and in lieu of a boat fitted up as a life-boat, be provided either with such boats as are usually called paddle-box boats, or with such other boats as may be directed in lieu thereof by the Lord High Admiral or the commissioners for executing the office of Lord High Admiral for the time being.

V. And be it enacted, That no steam-vessel of one hundred tons burden or upwards shall proceed to sea unless it shall be provided with a hose for the purpose of extinguishing fire capable of being connected with the engines of the vessel.

VI. And be it enacted, That for the purposes of this act the tonnage of vessels shall be ascertained according to the rules of admeasurement prescribed by any act of parliament for the time being in force regulating the admeasurement of the tonnage and burden of the merchant ships of the United Kingdom.

VII. And be it enacted, That if any such steam-vessel as aforesaid proceed to sea without being provided with such hose as aforesaid, or if any steam or other vessel of one hundred tons burden or upwards proceed to sea without being so provided with boats as aforesaid, or if any of such boats be lost or rendered useless in the course of the voyage through the wilful fault or negligence of the owner or master, or if in case of any of such boats being accidentally lost or injured in the course of the voyage, the master or other person having charge of the vessel wilfully neglect to replace or repair the same on the first convenient opportunity, then and in every case where the owner shall appear to be in fault he shall forfeit a sum not exceeding one hundred pounds, and in every case where the master or other person having charge of the vessel shall appear to be in fault, he shall forfeit a sum not exceeding fifty pounds.

VIII. And be it enacted, That it shall not be lawful for any officer of customs to clear out any such steam-vessel as aforesaid for any voyage to parts beyond the seas without being provided with such hose as aforesaid, or being an iron steam vessel without being so divided as aforesaid, nor to clear out any steam or other vessel of one hundred tons burden or upwards for any voyage to parts beyond the seas unless the same be provided with such boats as herein-before are required.

IX. And be it enacted, That every steam-vessel when meeting or passing any other steam-vessel shall pass as far as may be safe on the port side of such other vessel; and every steam-vessel navigating any river or narrow channel shall keep as far as is practicable to that side of the fair-way or mid-channel of such river or channel which lies on the starboard side of such vessel, due regard being had to the tide and to the position of each vessel in such tide; and the master or other person having the charge of any such steam-vessel, and neglecting to observe these regulations, or either of them, shall for each and every instance of neglect forfeit and pay a sum not exceeding fifty pounds.

X. And be it enacted, That the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral, may from time to time make regulations requiring the exhibition of such lights by steam-vessels in such manner, within such places, except the river Thames above Yantlett Creek, and under such circumstances as the said Lord High Admiral or the said Commissioners may think fit, and may from time to time make any other regulations revoking or altering any previous regulations.

XI. And be it enacted, That the said Lord High Admiral or the said Commissioners shall cause such regulations, as soon as conveniently may be after the same shall have been made, to be published in four successive London Gazettes, and the same shall be deemed to be in force from the date of the last of such publications until the same shall have been altered or revoked, and such alteration or revocation shall have been twice published in like manner as aforesaid.

XII. And be it enacted, That the master or other person having the charge of any steam-vessel which shall be in any river or narrow channel in Great Britain or Ireland, or the adjacent islands, or upon the sea within twenty miles of any part of the coast of Great Britain or Ireland, shall, whether under weigh or at anchor, between sunset and sunrise, exhibit such lights within such places, in such manner, and under such circumstances as by the said regulations herein-



before authorized to be made by the said Lord High Admiral or by the said Commissioners shall be required, and in default thereof shall forfeit and pay a sum not exceeding twenty pounds for every night in which such default shall be made; and the owner of any steam-vessel in which such light shall not be exhibited as aforesaid shall not be entitled to recover any recompence or damage whatsoever which may be sustained by such vessel in consequence of any other vessel running foul thereof during the night.

XIII. And be it enacted, That if any damage to any person or property shall be sustained in consequence of the nonobservance as respects any steam-vessel of the rules contained in the two enactments relative to the passing of steam-vessels and to the exhibiting of lights herein-before contained, the same shall in all courts of justice be deemed in the absence of proof to the contrary to have been occasioned by the wilful default of the master or other person having the charge of such steam-vessel, and such master or other person shall be subject in all proceedings, whether civil or criminal, to the legal consequences of such wilful default.

XIV. And be it enacted, That on or before the thirtieth day of April and the thirty-first day of October in every year the owners of every steam-vessel shall transmit to the Lords of the Committee of Privy Council for Trade the two following declarations in writing; (that is to say,)

First, A declaration of the sufficiency and good condition of the hull of such steamer under the hand of a shipwright surveyor, to be approved by the Lords of the said Committee;

Second, A declaration of the sufficiency and good condition of the machinery of such steam-vessel under the hand of an engineer, to be approved in like manner by the Lords of the said Committee; such declarations bearing date of some day in the said months of April or October respectively;

And the Lords of the said Committee shall register such declarations, and shall transmit to the owners of such steam-vessels respectively certificates under the hand of one of the secretaries or assistant secretaries of the said Committee of the registry of such declarations: Provided always, that if the owners of any such vessel shall certify to the Lords of the said Committee that such vessel has been, during the whole of such month of April or of October respectively and still is in foreign parts, so that it is impossible to obtain the declarations herein-before required, bearing date as is herein-before prescribed, and shall at the same time transmit to the Lords of the said Committee the declarations herein-before required, bearing date of a day not being more than seven days before such vessel last sailed or departed from any part of the United Kingdom, then and in every such case the Lords of the said Committee shall register such declarations, and shall transmit to the owners of such last-mentioned steam-vessels respectively certificates of the registry of such declarations: Provided nevertheless, that this enactment shall not extend or apply to any steam-vessels so employed as herein-after mentioned during the continuance of such employment, (that is to say,) whilst employed in the royal mail service, or the conveyance of the royal public mails or dispatches under contract with and under the superintendence of the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral.

XV. And whereas it may happen that by reason of a steam-vessel or the machinery thereof being under repair during either of the said months of April or October it may be impracticable to make such declarations as are herein-before required in either of the said months; be it enacted, That in such case it shall be lawful for the owners of such steam-vessels at any time to make a representation to that effect to the Lords of the Committee of Privy Council for Trade, and to transmit therewith such declarations as are herein-before required, and it shall be lawful thereupon for the said Lords, if they shall be satisfied of the truth of such representation, to register such declarations notwithstanding they shall not bear date in either of the months of April or October; and the said Lords shall transmit to the owners of such steam-vessels certificates of the registry thereof in manner herein-before provided, and such certificates shall have the like force and effect and be used for all the same purposes and in the same manner as if the said certificates referred to declarations made in either of the said months of April or October.

XVI. And be it enacted, That from and after the first day of June, One thousand eight hundred and forty-seven, it shall not be lawful for any steam-vessel, except as is lastly herein-before excepted, to proceed to sea, unless the owner thereof shall have duly transmitted to the Lords of the Committee of Privy Council for Trade such declarations, and shall have received from the Lords of

Penalty.

Steam vessels not exhibiting lights not entitled to compensation.

Penalty on masters, &c. neglecting to observe the regulations as to passing of steamers or exhibiting of lights.

Before 30th of April and 31st Oct. in every year owners to transmit declarations to the Board of Trade.

Board of Trade to register declarations, and grant certificates of the same.

Certificate may be granted though declaration not made in April or October.

Officers of Customs not to clear out vessels except upon production of certificate of registry.

the said Committee such certificates of the registry thereof as herein-before is mentioned; and that it shall not be lawful for any officer of her Majesty's Customs to clear out any steam-vessel carrying passengers for any voyage to parts beyond the seas, unless upon the production of the certificate of the registry of the declarations which shall most recently have been made in respect of such steam-vessel, and unless such declaration shall have been so made within six calendar months of the application for clearance.

Penalty on owners of vessels for not transmitting declarations.

XVII. And be it enacted, That if any steam-vessel proceed to sea with passengers, the owner whereof has not duly transmitted to the Lords of the said Committee such declarations, and received from the Lords of the said Committee such certificates of the registry of such declarations as herein-before is mentioned, the owner of such steam-vessel shall forfeit a sum not exceeding one hundred pounds.

Persons guilty of forging certificate or declaration guilty of a misdemeanor.

XVIII. And be it enacted, That any person who shall knowingly or wilfully make or assist in making a false or fraudulent declaration or certificate, or who shall knowingly or wilfully forge, counterfeit, or fraudulently alter, or shall aid and assist in forging, counterfeiting, or fraudulently altering, or who shall attempt to forge, counterfeit, or fraudulently alter, any declaration or certificate provided for by this act, or any words or figures in any such declaration or certificate, or the signature to any such declaration or certificate, he shall be deemed to be guilty of a misdemeanor.

Accidents and damages to steamers to be reported to the Board of Trade.

XIX. And be it enacted, That whenever any steam-vessel shall have sustained or caused any serious accident occasioning loss of life or property, or received any material damage affecting her sea-worthiness, either in her hull or her engine, by grounding or by collision with any other vessel, or by any other means, the master or other person having the charge of such vessel shall, as soon as conveniently may be, transmit through the Post Office, by letter addressed to the Lords of the Committee of Privy Council for Trade, and signed by such master or other person, a report of such accident or damage, and the probable occasion thereof, stating therein the name of the vessel, the port to which she belongs, and the place where she is, in order that the Lords of the said Committee may, if they think fit, investigate the matter; and should the owner or owners of any steam-vessel, from her non-appearance or otherwise, have reason to apprehend that such steam-vessel is wholly lost, he or they shall, as soon as conveniently may be, in like manner send notice thereof to the Lords of the said Committee; and every owner, master, or such other person as aforesaid who shall neglect to send such notice as hereby is required within a reasonable time after any such accident shall have happened, shall for every such offence forfeit and pay a sum not exceeding fifty pounds.

If owner, &c. apprehend loss of steamer notice to be sent to Board of Trade. Penalty for neglect.

In cases of accident Board of Trade may appoint inspectors to report.

XX. And be it enacted, That whenever any steam-vessel shall have sustained or caused any serious accident occasioning loss of life or property, or received any material damage affecting her sea-worthiness, either in her hull or her engine, by grounding or by collision with any other vessel, or by any other means, it shall be lawful for the Lords of the said Committee to appoint any proper person or persons as inspector or inspectors to inquire into and to report upon such accident; and it shall be lawful for every person so authorized at all reasonable times, upon producing his authority, if required, to go on board and inspect any such steam-vessel and the machinery thereof, and every part thereof respectively, not detaining or delaying the vessel from proceeding on her voyage, and to make such inquiries as to the nature, circumstances, and causes of such accident as he or they may think fit.

Inspectors may call for the production of evidence.

XXI. And be it enacted, That the said inspectors or any of them shall be and they are hereby empowered, by summons under their or his hands or hand, to require the attendance of all such persons as they or he shall think fit to call before them or him upon any question or matter connected with or relating to the execution of any of the powers and duties vested by this act in the said inspectors; and also to make inquiries and to require answers or returns thereto in relation to any such matters, and for the purpose aforesaid to administer oaths, and to examine all persons upon oath, and to require and enforce the production upon oath of all log-books, accounts, agreements, or other papers or writings in anywise relating to every such matter as aforesaid, or, in lieu of requiring or administering an oath, that the said inspector or inspectors may, if he or they think fit, require every such person to make and subscribe a declaration of the truth of the matters respecting which he shall be or shall have been examined or interrogated: Provided always, that no such person shall be required in obedience to any such summons to travel more than ten miles from his actual abode at the time of receiving such summons unless tender shall be made to him of such

Proviso as to expenses of witnesses.

reasonable expences in respect of his attendance to give evidence, and his journeys to and from the place where he shall be required to attend for that purpose, as would be allowed to any witness attending on subpoena to give evidence before any of her Majesty's courts at Westminster, and in case of any dispute as to the amount of such expences the same shall be referred by the inspectors to one of the Masters of her Majesty's Court of Queen's Bench, who is hereby required to ascertain and certify the proper amount of such expences on a request made to him for that purpose under the hand or hands of the said inspector or inspectors.

XXII. And be it enacted, That if any person shall wilfully obstruct or impede such inspector or inspectors, or any of them, in the execution of their duty, whether on board any ship or vessel or elsewhere, every person so offending, and all others aiding or assisting therein, shall and may be seized and detained by such inspector or inspectors, or any person or persons whom he or they may call to his or their assistance, until such offender or offenders can be conveniently taken before some justice of the peace having jurisdiction in the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid (who is hereby authorized and required upon complaint to him upon oath to take cognizance thereof and to act summarily in the premises) shall in the discretion of such justice forfeit any sum not exceeding five pounds, and in default of payment thereof shall and may be imprisoned for any term not exceeding two calendar months, unless the amount of the penalty shall have been sooner discharged.

Penalty for obstructing inspectors in the execution of their duty.

XXIII. And be it enacted, That every penalty or forfeiture imposed by this act may be recovered by summary proceeding before two justices, and upon the exhibiting of any information in writing before any justice such justice shall issue a summons requiring the party complained against to appear before two justices having jurisdiction at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode, or on board any ship or vessel to which such person shall belong; and upon the appearance of the party complained against, or in his absence after proof of the due service of such summons, it shall be lawful for any two justices having jurisdiction to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay such penalty as may seem fit, and not greater than the penalty or forfeiture specified in this act, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be summarily recovered before two justices.

XXIV. And be it enacted, That in case any offence shall be committed upon the high seas against this act, or any penalty or forfeiture shall be incurred on the high seas for any breach of this act, such offence shall for the purpose of prosecution be deemed and taken to have been committed, and such penalty or forfeiture to have been incurred, at the place on land in the United Kingdom into which the person committing such offence, or incurring such penalty or forfeiture, shall be taken, brought, or carried, or in which such person shall be found; and in case such place or land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the peace of the county within which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine all cases of offences against this act so committed on the high seas, and to convict the offender or offenders in the penalties or forfeitures prescribed by this act, any charter or act of parliament to the contrary notwithstanding: Provided always that where any offence shall be committed, or any penalty or forfeiture incurred, in any place upon the water not being within any county of the United Kingdom, or where any doubt exists as to the same being within any county, such offence shall for the purposes of this act be deemed and taken to be an offence committed on the high seas: Provided also that it shall and may be lawful for any justice of the peace whatsoever on the exhibiting before him any information in writing for any offence against this act so committed or taken to have been committed on the high seas as aforesaid, to issue a summons, and such justice of the peace is hereby required to issue a summons for the appearance of the party against whom such information in writing shall have been exhibited; and such summons directed to such party being served as herein-before is ordered shall be deemed to have been sufficiently served.

Offences on the high seas deemed to have been committed at the place into which the offender is brought, or in which he is found.

XXV. And be it enacted, That if forthwith upon any such adjudication as

Penalties to be levied by distress.

- aforesaid the amount of the penalty or forfeiture, and of such costs, as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, or any other justice having jurisdiction as aforesaid, shall issue their or his warrant of distress accordingly.
- In default of distress justices may commit the offender to prison.** XXVI. And be it enacted, That it shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.
- Distress how to be levied.** XXVII. And be it enacted, That where in this act any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expences of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.
- Distress not unlawful for want of form.** XXVIII. And be it enacted, That no distress levied by virtue of this act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him; but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.
- Application of penalties.** XXIX. And be it enacted, That all penalties and forfeitures recovered under this act shall be applied as follows; one half thereof shall be paid to the person who shall sue or proceed for the same, and the other half to her Majesty's use, and shall be paid to the sheriff of the county, city, or town where the same shall have been imposed, and shall have been duly accounted for by him; and that all convictions before justices, and all fines, forfeitures, or penalties imposed in consequence of such convictions, shall be returned to the Court of Quarter Sessions under the provisions of an act passed in the third year of his late Majesty King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated."
- 3 G. 4. c. 46.** XXX. And be it enacted, That no indictment shall be preferred for any offence against this act unless under the direction of the Lords of the Committee of Privy Council for Trade, or of the Commissioners of her Majesty's Customs; and no suit or proceeding shall be commenced for the recovery of any penalty or forfeiture for any such offence unless in the name of her Majesty's Attorney General for England or Ireland, or in the name of the Lord Advocate of Scotland, or in the name of some public officer under the direction of the lords of the said committee or of the said commissioners respectively.
- Indictments to be preferred by direction of the Board of Trade or Commissioners of Customs.** XXXI. And be it enacted, That no person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this act for any offence made cognizable before a justice unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.
- Penalties to be sued for within six months.** XXXII. And be it enacted, That it shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expences, or if any person appearing shall refuse to be examined on oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.
- Penalty on witnesses making default.**

XXXIII. And be it enacted, That no warrant of commitment consequent upon any summary conviction under this act shall be held void by reason of any defect in such warrant, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same, nor shall any conviction, order, or other proceeding in pursuance of this act be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Proceedings not to be quashed for want of form nor removed by certiorari.

XXXIV. And be it enacted, That if any person shall think himself aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this act, he may appeal to the General Quarter Sessions for the county or place in which the cause of appeal shall have arisen ; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Parties aggrieved may appeal to Quarter Sessions on giving security.

XXXV. And be it enacted, That at the Quarter Sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions ; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

XXXVI. And be it enacted, That nothing in this act contained shall extend to any of her Majesty's ships-of-war, nor to any vessel not being a British registered vessel.

Not to extend to ships-of-war, &c.

XXXVII. And be it enacted, That nothing in this act contained shall be construed as repealing or altering any of the provisions of an act passed in the session of parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled " An Act for regulating the Carriage of Passengers in Merchant Vessels."

Nothing in this act to be construed to alter, &c. 5 & 6 Vict. c. 107.

## No. XI.

### *Order in Council of 6th March, 1665-6, defining the Rights of the Lord High Admiral.*

WHEREAS, through the long intermission of any war at sea by his Majesty's authority, several doubts have arisen concerning certain rights of the Lord High Admiral in time of hostility, the determination whereof appearing very necessary for the direction as well of his Majesty's officers as of those of the Lord High Admiral, upon full hearing and debate of the particulars hereafter mentioned, the King's Counsel learned in the common law, and likewise the Judge of the High Court of Admiralty and those of his Majesty, &c. his Royal Highness the Lord High Admiral's counsel in the said High Court of Admiralty, being present, his Majesty present in Council was pleased to declare —

1st. That all ships and goods belonging to enemies coming into any port, creek, or road of this his Majesty's kingdom of England or of Ireland, by stress of weather or other accident, or by mistake of port, or by ignorance, not knowing of the war, do belong to the Lord High Admiral ; but such as shall voluntarily come in, either men-of-war or merchantmen, upon revolt from the enemy, and such as shall be driven in and forced into port by the King's men-of-war, and also such ships as shall be seized in any of the ports, creeks, or roads of this kingdom or of Ireland, before any declaration of war or reprisals by his Majesty, do belong unto his Majesty.

2d. That all enemy's ships and goods casually met at sea and seized by any vessel not commissioned, do belong to the Lord High Admiral.

3d. That salvage belongs to the Lord High Admiral for all ships rescued.

4th. That all ships forsaken by the company belonging to them are the Lord High Admiral's, unless a ship commissioned have given occasion to such dereliction, and the ship so left be seized by such ship pursuing, or by some other ship commissioned then in the same company and in pursuit of the enemy: and the like is to be understood of any goods thrown out of any ship pursued.

## No. XII.

### *Proclamations respecting the Conveyance of Public and Private Treasure.*

GEORGE P. R.

WHEREAS by an act passed in the fifty-ninth year of the reign of his present Majesty, cap. 25., intitled "An Act to enable his Majesty to fix a Rate, and direct the Disposal of Freight-Money, for the Conveyance of Specie and Jewels on board his Majesty's Ships and Vessels," it is enacted, That from and after the eighth day of April, One thousand eight hundred and nineteen, all freight-money to be paid for the conveyance on board any of the ships and vessels of his Majesty, his heirs and successors, of gold, silver, and jewels, or of any other article which may be by special order received on board the said ships and vessels, and for which freight shall be payable, shall be paid at such rate, and distributed and applied for such purposes, and divided to and amongst such persons, in such proportions, and after such manner, as his Majesty, his heirs and successors, shall from time to time think fit to order and direct by any proclamation or proclamations to be issued for that purpose; and that no freight-money or reward shall hereafter be demanded, paid, received, or detained by, to or for the use or on account of any person or persons, for the conveyance on board of any of the ships and vessels of his Majesty, his heirs or successors, of any gold, silver, or jewels, or any other article which may be by special order received on board the said ship or vessel, and for which freight shall be payable, other than for the purposes, and by the person or persons, in the proportion, at the rates, and in the manner so to be paid and allowed by proclamation or proclamations; and that all bargains, contracts, covenants, and agreements made or entered into for the payment of any freight-money, for or in the name or on the account of freight for the conveyance of gold, silver, or jewels, or other articles as aforesaid, on board of any of his Majesty's ships or vessels, at any rate, or for any other purpose, or by or to any other person or persons, or in any other manner or proportions than as aforesaid, shall be and the same are hereby declared to be utterly void. We do, therefore, in pursuance of the powers so vested in his Majesty, his heirs and successors, by this our royal proclamation, in the name and on the behalf of his Majesty, and by and with the advice of his Majesty's Privy Council, think proper to order and direct, and we do hereby order and direct, that all gold, silver, and jewels, or other articles received as treasure by special order, conveyed in his Majesty's ships and vessels, in the care and charge of the captain or officer commanding such ship or vessel, shall be liable to the payment of freight, whether such treasure belong to the Crown or to other parties.

That on the delivery of any gold, silver, or jewels, or other articles as aforesaid, laden on board of any of his Majesty's ships or vessels, for which freight may or shall be payable as aforesaid, or according to the provisions and directions hereinafter contained, a receipt or bill of lading, or receipts or bills of lading, shall be made and signed by the captain or officer commanding such ship or vessel, describing the quantity or value of such gold, silver, jewels, or other articles as aforesaid, and the terms on and extent to which such captain or officer commanding such ship or vessel so receiving the said gold, silver, or jewels, or other articles, on board his said ship or vessel, shall be liable or responsible for the same, in case of loss or damage thereof to which by law he might be liable, in form or to the effect following:—

[Here insert Bill of Lading in the usual form.]

"And it is hereby stipulated and agreed between the said and the shipper and owners and consignees of the said , that in case of loss or damage happening to the said gold, silver, jewels, or other articles as aforesaid, the captain or officer commanding such ship or vessel as aforesaid shall not be holden liable or responsible for more than three fourths of the amount of such loss or damage."

That the rates at which freight shall be paid for public and for private treasure respectively, and in peace or war respectively, and for different voyages, shall be as follows, viz. :

|   | For<br>Treasure<br>belonging<br>to the<br>Crown. | For<br>Treasure<br>belonging<br>to other<br>Parties. |             |
|---|--|--|-------------|
|   | per Cent.  | per Cent.  | Peace. War. |
| Between any two ports in Europe on this side Gibraltar (Gibraltar included), and including also the Azores, Madeira, or Canaries -  |  |  |             |
| Between any two ports on the same foreign station, the navigable distance between which shall not exceed six hundred leagues; the Mediterranean Sea, Gibraltar included, being considered as one foreign station -  | ½  | 1½   | 2           |
| Between any port in Europe out of the Mediterranean, and any port in the Mediterranean beyond Gibraltar, or any port on the West Coast of Africa, including Simon's Bay, or any port on the east side of America, North or South, or the West India or other islands on the American Coast, including Bermuda and Newfoundland; or between any two ports in the same foreign station, the nearest navigable distance between which shall exceed six hundred leagues; or between any two ports on different stations not otherwise ordered - | 1  | 2  | 2½          |
| Between any port in the European or Atlantic Seas, north of the Equator, and any port beyond the Cape of Good Hope or Cape Horn -   | 1  | 2½   | 3           |

That in case of any difference on any question arising out of the above scale, or omitted in the said scale, the Lords Commissioners of the Admiralty shall have authority to decide what the freight shall be under the said scale, or adhering as nearly as possible, in cases not specified, to the spirit and principles of the said scale.

That on the shipment of gold, silver, or jewels, or other articles received on board as treasure by special order, the rate of freight, *per cent.*, according to the above scale, shall be endorsed on the bill or bills of lading, or receipt or receipts of the officer receiving the charge thereof, such endorsement or endorsements to be signed by the said officer; but in case of any difference of opinion abroad, or when immediate reference cannot be had to the Lords of the Admiralty, it may be expressed, "at such rate as the Lords Commissioners of the Admiralty shall decide."

When treasure belonging to the Crown shall be shipped in any of his Majesty's ships or vessels, with a commissary or conductor specially charged with the care thereof, the officer commanding such ship or vessel shall not be required to give any receipt, nor to sign any bill of lading, and such officer shall not receive any freight on account thereof, nor be liable to make good any loss or damage which may happen to the same.

That the Lords Commissioners of the Admiralty shall have authority to direct at what time, and for what time, and within what limits, the war freights shall be payable on private treasure received by special order.

And we do hereby further order and direct, That the whole amount of the said freight, when received, shall be divided into four parts, and distributed as follows, subject to the proviso herein-after mentioned: One fourth to the admiral or admirals, if more than one on the station or in the squadron to which the ship receiving treasure on board may belong; two fourths to the captain or officer

commanding such ship or vessel, who shall give his receipt or sign the bill of lading for the treasure; and one fourth to Greenwich Hospital, for the use of that institution.

That when there shall be more than one flag officer on a station, the said one fourth part shall be divided and distributed amongst the several flag officers on the station, in the following proportions, *viz.*

If there be but two flag officers, the chief shall have two third parts of the said one fourth, and the other shall have the remaining third part; but if the number of flag officers be more than two, the chief shall have only one half, and the other half shall be equally divided amongst the junior flag officers; but if there be no flag officer on the station, or that the ship or vessel be not under the orders of a flag officer, then that the captain or officer commanding the ship or vessel shall have three fourths, and Greenwich Hospital one fourth.

Provided that such admiral or admirals shall not be entitled to claim his or their respective share or shares in such freight-money, otherwise than on condition that he or they shall, before the gold, silver, jewels, treasure, or other articles as aforesaid, shall be put on board such ship or vessel, have respectively given notice in writing to the captain or officer commanding such ship or vessel, or his agent, or have entered or caused to be entered in a public order book on board the ship of the commander in chief, or the senior flag officer commanding on the station or in the squadron to which such vessel belongs; or in case of a junior flag officer absent from the commander in chief, unless such junior flag officer shall have notified under his hand to the commander in chief, to be entered in the said order book, an engagement in writing in form or to the effect following:—

“I, A. B., am desirous of partaking in the advantages, with the risks attendant thereon, arising out of the conveyance of freight or treasure in any of the ships or vessels in the squadron [*or, in the particular ship, as the case may be*]: and I hereby engage to make good to the captain or captains, officer or officers, commanding such ships or vessels respectively [*or, ship or vessel, as the case may be*], such part of any loss or damage for which he or they may be liable in respect to the gold, silver, treasure, or other articles so carried on freight, and which he or they respectively shall have actually paid and satisfied, as shall be in proportion to the share or interest in the said freight-money to which I may be entitled.”

And that such share or shares of the admiral or admirals as aforesaid, to which he or they shall not be entitled on the conditions herein-before expressed, shall go and belong to the captain or officer commanding the ship or vessel in which the gold, silver, treasure, or other articles shall be carried on freight as aforesaid.

That in the event of loss or damage happening to the gold, silver, jewels, or other articles so received on freight exceeding the total freight-money, Greenwich Hospital shall not be entitled to receive any sum on account of such freight; and in cases in which the loss may not amount to the whole of the freight-money, Greenwich Hospital shall be entitled only to its proportion of the balance of freight-money over and above such loss or damage.

That commodores, with captains under them, and captains of the fleet, are to be considered, agreeably to the rules of the service, as flag officers; and commodores, without captains under them, shall, with respect to freight, be also considered as flag officers when in the command of a station.

That when the captain or commander, or his agent, shall have received the freight, he shall pay over to the senior flag officer and to the treasurer of Greenwich Hospital, without delay, their respective shares, and the captain shall be held responsible to both for any loss which may occur through his neglect or delay in receiving or paying the same; but if there be any question or difficulty as to the payment, he is to apprise the senior flag officer and the treasurer of Greenwich Hospital respectively of the causes of such delay.

That the captain or officer commanding, on receiving any treasure on board any of his Majesty's ships or vessels, shall transmit to the senior flag officer, when such captain or officer commanding shall be under a flag officer, and in every case to the treasurer of Greenwich Hospital and to the secretary of the Admiralty, a return of the amount of such treasure, and of the freight paid or to be paid thereon.

That when the treasure shall, during the voyage, be transhipped into one or more ships, the freight shall be divided, *pro rata itineris*, among the admirals and captains who may be entitled to share therein, according to the services performed by the different ships respectively: and if any difficulty or dispute shall arise respecting such division or distribution, any party interested therein may refer the same to the Lords Commissioners of the Admiralty; and the decision



or orders of the Lords Commissioners of the Admiralty, or any three of them, as to such division or distribution, shall be final and conclusive thereon.

That, in order to prevent any doubt or misunderstanding as to the rate or distribution of freight on gold, silver, jewels, or other articles as aforesaid, received on board flag ships, or any other of his Majesty's ships and vessels, and to prevent any private agreements inconsistent with these regulations, all flag or other officers are expressly forbidden to receive on board any of his Majesty's ships or vessels any gold, silver, jewels, or other articles as aforesaid, upon any agreement or condition different from these regulations, or to take, demand, or receive any sum other than those established by these regulations.

That these rules and regulations shall be in force from the day on which they shall be received by his Majesty's officers, and be thenceforward taken and understood to be the established rule and custom of his Majesty's naval service, on the several particulars to which they refer, till they shall be revoked or otherwise altered by any proclamation or proclamations to be issued by us.

Given at the Court at Carlton House, this twelfth day of July, one thousand eight hundred and nineteen, in the fifty-ninth year of his Majesty's reign.

GOD SAVE THE KING.

WILLIAM R.

Whereas by an act passed in the fifty-ninth year of the reign of his late Majesty King George the Third, chapter 25th, intituled "An Act to enable his Majesty to fix a Rate and direct the Disposal of Freight-Money for the Conveyance of Specie and Jewels on board his Majesty's Ships and Vessels," it is enacted, that from and after the eighth day of April one thousand eight hundred and nineteen, all freight money to be paid for the conveyance, on board any of the ships and vessels of his Majesty, of gold, silver, and jewels, or of any other article which may by special order be received on board, and for which freight shall be payable,

(Circular to the Naval Commanders-in-Chief.)

Admiralty, 4th June, 1821.

Sir, — My Lords Commissioners of the Admiralty having had under their consideration a question relative to the freight money to be allowed for treasure deposited on board his Majesty's ships for custody only, have decided that freight for such a deposit should be paid as if such deposit were a conveyance from one place to another within the same station, and shall be divided (where it has been on board more than one of his Majesty's ships) among the captains, as freight for conveyance would have been; — in all cases Greenwich Hospital is to have a share; and where, after any such deposit, new bills of lading, or new orders for conveyance, either on board another ship or the same ship, shall be made, the freight established for such conveyance by the Order in Council is to be charged, over and above the freight which might be already due on the score of deposit.

I have it in command from their Lordships to acquaint you therewith for your information and guidance.

I am, &c.

J. W. CROKER.

Admiralty, 3d July, 1827.

His Royal Highness the Lord High Admiral having received a representation from the governors and directors of Greenwich Hospital, that many instances have occurred in which the regulations contained in his Majesty's proclamation, dated the 12th of July, 1819, in regard to the freight of treasure on board his Majesty's ships, have been either wholly neglected, or only partially complied with, his Royal Highness feels himself under the necessity of bringing to the recollection of all officers who may be entrusted with the freight of treasure the several provisions of his Majesty's proclamation aforesaid, and to repeat the general orders issued by the Lords Commissioners of the Admiralty, on the subject of freight since the promulgation of the said proclamation.

Admiralty, 8th October, 1842.

My Lords Commissioners of the Admiralty are pleased to direct that officers are not to constitute themselves judges of their own claims to freight, nor deduct from treasure belonging to the state such sums as they consider themselves entitled to, but that all claims for freight on *public* treasure be submitted in the usual manner to the Lords of the Treasury for such orders as may appear to them to be required.

And with reference to the Circular Order of 4th June, 1821, granting an allowance for treasure deposited on board her Majesty's ships for *custody only*, as if such deposit were a conveyance from one place to another within the same station, my Lords direct that the regulations under that order are not to be considered as applying to public treasure, but to treasure belonging to private individuals only.

By command of their Lordships, SIDNEY HERBERT.

shall be paid at such rate, and be distributed and applied for such purposes, and divided to and amongst such persons, in such proportions, and after such manner, as his Majesty, his heirs and successors, should from time to time think fit to order and direct by any proclamation or proclamations to be issued for that purpose; in pursuance of which act a proclamation was, on the twelfth day of July following, made and issued by his royal highness the then Prince Regent in the name and on the behalf of his said Majesty, whereby, amongst other things, a scale of rates at which freight should be payable for public and private treasure respectively, in peace and war, and for different voyages, was fixed and established: And whereas we have thought fit to order that the said rates should be altered; we have, therefore, by and with the advice of our Privy Council, deemed it expedient to issue this our royal proclamation, and we do hereby ordain, declare, and command that from and after the first day of September next, the said scale of rates so fixed shall cease and be no longer in force: and we do further declare, that from thenceforth the following rates shall be established during peace and war.

|   | For<br>Crown<br>Treasure. | For Treasure<br>belonging to<br>other Parties. |           |
|---|---------------------------|--|-----------|
|   |                           | Peace and War.                                 |           |
|   |                           | Gold or<br>Jewels.                             | Silver.   |
|   | per cent.                 | per cent.                                      | per cent. |
| Between any two ports, the navigable distance between which shall not exceed six hundred leagues  | ½                         | ½  | 1         |
| Between any two ports, the navigable distance between which shall exceed six hundred leagues, and shall be less than two thousand leagues | 1                         | 1½   | 1½        |
| For any distance of two thousand leagues and upwards  | 1                         | 1½   | 2         |

And it is further established and declared, that such freights shall be payable clear of all deduction whatsoever, and that it shall be stipulated in the bill of lading that the captains and commanding officers of our ships and vessels shall not be liable to any expences attending the shipment of such treasure, or other articles, until the same shall be safe alongside of their respective ships or vessels, and that their liability shall cease from the moment they shall have landed the treasure at the port to which the ships carrying the treasure shall be destined.

And it is further declared, that in all other respects, save what is hereby altered, the said proclamation of the twelfth day of July one thousand eight hundred and nineteen, and the rules and regulations thereby established, shall continue in full force.

Given at our court at St. James's, this twenty-third day of April one thousand eight hundred and thirty-one, in the first year of our reign.

GOD SAVE THE KING.

WILLIAM R.

WHEREAS we did, by our royal proclamation of the twenty-third day of April last, establish and declare a scale of rates at which freight should be payable for public and private treasure conveyed on board any of our ships and vessels; we have, by and with the advice of our Privy Council, thought fit further to ordain, declare, and command, and we do hereby ordain, declare, and command, that from and after the first day of September next, the freight for conveying gold and silver in any of our packets between any two ports, the navigable distance between which shall exceed six hundred leagues, shall be fixed at the rate of one per cent., both for gold and silver: and we do hereby establish and declare, that the responsibility of the officer in charge of such treasure shall commence when it shall be safe alongside the said packet, and shall cease the moment that it shall be landed at the port of destination: and it is further declared, that in all other respects the said proclamation of the twenty-third day of April last, and the rules and regulations thereby established, shall continue in full force.

Given at our court at St. James's, this eighth day of June one thousand eight hundred and thirty-one, in the first year of our reign.

GOD SAVE THE KING.

No. XIII.

8 & 9 Vict. c. 88. (4th August, 1845.)

*An Act for the Encouragement of British Shipping and Navigation.*

WHEREAS an act was passed in the session of parliament holden in the third and fourth years of the reign of King William the Fourth, intituled "An Act for the Encouragement of British Shipping and Navigation," whereby the laws for the encouragement of British shipping and navigation were consolidated: And whereas since the passing of the said act divers parts of acts for the further amendment of the law in that respect have been found necessary, and it will be of advantage to the trade and commerce of the country that the said act and parts of acts should be consolidated into one act: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act the same shall come into and be and continue in full force for the purposes therein mentioned, except where any other commencement is herein particularly directed.

3 & 4 W. 4.  
c. 54.

Commence-  
ment of act.

II. And be it enacted, That the several sorts of goods herein-after enumerated, being the produce of Europe, (that is to say,) masts, timber, boards, tar, tallow, hemp, flax, currants, raisins, figs, prunes, olive oil, corn or grain, wine, brandy, tobacco, wool, shumac, madders, madder roots, barilla, brimstone, bark of oak, cork, oranges, lemons, linseed, rapeseed and clover seed, shall not be imported into the United Kingdom to be used therein, except in British ships, or in ships of the country of which the goods are the produce, or in ships of the country from which the goods are imported.

Ships in which  
only enumer-  
ated goods of  
Europe may  
be imported.

III. And be it enacted, That goods the produce of Asia, Africa, or America shall not be imported from Europe into the United Kingdom to be used therein, except the goods herein-after mentioned; (that is to say,)

Places from  
which only  
goods of Asia,  
Africa, or  
America may  
be imported.

Goods the produce of the dominions of the Emperor of Morocco, which may be imported from places in Europe within the Straits of Gibraltar:

Goods the produce of Asia or Africa which (having been brought into places in Europe within the Straits of Gibraltar from or through places in Asia or Africa within those Straits, and not by way of the Atlantic Ocean,) may be imported from places in Europe within the Straits of Gibraltar:

Goods the produce of places within the limits of the East India Company's charter, which (having been imported from those places into Gibraltar or Malta in British ships) may be imported from Gibraltar or Malta:

Goods taken by way of reprisals by British ships:

Bullion, diamonds, pearls, rubies, emeralds, and other jewels or precious stones.

IV. And be it enacted, That goods the produce of Asia, Africa, or America shall not be imported into the United Kingdom to be used therein, in foreign ships, unless they be the ships of the country in Asia, Africa, or America of which the goods are the produce, and from which they are imported, except the goods herein-after mentioned; (that is to say,)

Ships in which  
only goods of  
Asia, Africa, or  
America may  
be imported.

Goods the produce of the dominions of the Grand Seignior in Asia or Africa, which may be imported from his dominions in Europe in ships of his dominions:

Raw silk and Mohair yarn, the produce of Asia, which may be imported from the dominions of the Grand Seignior in the Levant seas, in ships of his dominions:

Bullion:

Provided always, that in case any treaty shall be made with any country having a port or ports within the Straits of Gibraltar, stipulating that such productions of Asia or Africa as may by law be imported into the United Kingdom from places in Europe within the Straits of Gibraltar in British ships shall also be imported from the ports of such country in the ships of such country, then and in every such case it shall be lawful to import such goods from the ports of such country in the ships of such country.

Proviso.

V. Provided always, and be it enacted, That all manufactured goods shall be deemed to be the produce of the country of which they are the manufacture.

Manufacture  
deemed pro-  
duce.

From Guernsey, &c.

Exports to Asia, &c., and to Guernsey, &c.

Coastwise.

Between Guernsey, Jersey, &c.

Between British possessions in Asia, &c.

Imports into British possessions in Asia, &c.

Her Majesty may, by Order in Council, declare that foreign goods may be imported into Hong Kong in any vessels.

No ship British unless registered and navigated as such.

But vessels under fifteen tons burden admitted in navigation upon rivers, &c. although not registered.

Vessels under thirty tons for Newfoundland fishery, &c., need not be registered.

Honduras ships to be as British in trade with United Kingdom and colonies in America.

VI. And be it enacted, That no goods shall be imported into the United Kingdom from the islands of Guernsey, Jersey, Alderney, or Sark, except in British ships.

VII. And be it enacted, That no goods shall be exported from the United Kingdom to any British possession in Asia, Africa, or America, nor to the islands of Guernsey, Jersey, Alderney, or Sark, except in British ships.

VIII. And be it enacted, That no goods or passengers shall be carried coastwise from one part of the United Kingdom to another, or from the United Kingdom to the Isle of Man, or from the Isle of Man to the United Kingdom, except in British ships.

IX. And be it enacted, That no goods shall be carried from any of the islands of Guernsey, Jersey, Alderney, Sark, or Man to any other of such islands, nor from one part of any of such islands to another part of the same island, except in British ships.

X. And be it enacted, That no goods shall be carried from any British possession in Asia, Africa, or America to any other of such possessions, nor from one part of any of such possessions to another part of the same, except in British ships.

XI. And be it enacted, That no goods shall be imported into any British possession in Asia, Africa, or America in any foreign ships, unless they be ships of the country of which the goods are the produce, and from which the goods are imported.

XII. And be it enacted, That it shall be lawful for her Majesty from time to time, by any Order in Council, to declare that goods the growth, produce, or manufacture of any foreign country may be imported into the island of Hong Kong from the same or any other foreign country, in vessels belonging to the same or any other foreign country, and however navigated, subject nevertheless to such limitations and restrictions as shall be contained in any such Order in Council; and from and after the publication of any such Order in Council such goods may lawfully be so imported into the said island of Hong Kong according to the provisions of such Order, and until the revocation thereof; and any such Order in Council may from time to time be altered or revoked by her Majesty by any subsequent Order in Council.

XIII. And be it enacted, That no ship shall be admitted to be a British ship unless duly registered and navigated as such, and that every British registered ship (so long as the registry of such ship shall be in force, or the certificate of such registry retained for the use of such ship,) shall be navigated during the whole of every voyage (whether with a cargo or in ballast), in every part of the world, by a master who is a British subject, and by a crew whereof three fourths at least are British seamen; and if such ship be employed in a coasting voyage from one part of the United Kingdom to another, or in a voyage between the United Kingdom and the islands of Guernsey, Jersey, Alderney, Sark, or Man, or from one of the said islands to another of them, or from one part of either of them to another of the same, or be employed in fishing on the coasts of the United Kingdom or of any of the said islands, then the whole of the crew shall be British seamen.

XIV. Provided also, and be it enacted, That all British-built boats or vessels under fifteen tons burden, wholly owned and navigated by British subjects, although not registered as British ships, shall be admitted to be British vessels in all navigation in the rivers and upon the coasts of the United Kingdom, or of the British possessions abroad, and not proceeding over sea, except within the limits of the respective colonial governments within which the managing owners of such vessels respectively reside; and that all British-built boats or vessels wholly owned and navigated by British subjects, not exceeding the burden of thirty tons, and not having a whole or a fixed deck, and being employed solely in fishing on the banks and shores of Newfoundland and of the parts adjacent, or on the banks and shores of the provinces of Canada, Nova Scotia, or New Brunswick, adjacent to the Gulf of Saint Lawrence, or on the north of Cape Canso, or of the islands within the same, or in trading coastwise within the said limits, shall be admitted to be British boats or vessels, although not registered, so long as such boats or vessels shall be solely so employed.

XV. Provided also, and be it enacted, That all ships built in the British settlements at Honduras, and owned and navigated as British ships, shall be entitled to the privileges of British registered ships in all direct trade between the United Kingdom or the British possessions in America and the said settlements, provided the master shall produce a certificate under the hand of the superintendent of those settlements that satisfactory proof has been made before

him that such ship (describing the same) was built in the said settlements, and is wholly owned by British subjects: Provided also, that the time of the clearance of such ship from the said settlements for every voyage shall be endorsed upon such certificate by such superintendent.

XVI. And be it enacted, That no ship shall be admitted to be a ship of any particular country, unless she be of the build of such country, or have been made prize of war to such country, or have been forfeited to such country under any law of the same made for the prevention of the slave trade, and condemned as such prize or forfeiture by a competent court of such country, or be British-built (not having been a prize of war from British subjects to any other foreign country), nor unless she be navigated by a master who is a subject of such foreign country, and by a crew of whom three fourths at least are subjects of such country, nor unless she be wholly owned by subjects of such country usually residing therein, or under the dominion thereof: Provided always, that the country of every ship shall be deemed to include all places which are under the same dominion as the place to which such ship belongs.

XVII. And be it enacted, That no person shall be qualified to be a master of a British ship or to be a British seaman within the meaning of this act, except the natural-born subjects of her Majesty, or persons naturalized by any act of parliament, or made denizens by letters of denization, or except persons who have become British subjects by virtue of conquest or cession of some newly acquired country, and who shall have taken the oath of allegiance to her Majesty, or the oath of fidelity required by the treaty or capitulation by which such newly acquired country came into her Majesty's possession, or persons who shall have served on board any of her Majesty's ships-of-war in time of war for the space of three years: Provided always, that the natives of places within the limits of the East India Company's charter, although under British dominion, shall not, upon the ground of being such natives, be deemed to be British seamen: Provided always, that every ship (except ships required to be wholly navigated by British seamen) which shall be navigated by one British seaman if a British ship, or one seaman of the country of such ship if a foreign ship, for every twenty tons of the burden of such ship, shall be deemed to be duly navigated, although the number of other seamen shall exceed one fourth of the whole crew: Provided also that nothing herein contained shall extend to repeal or alter the provisions of an act passed in the fourth year of the reign of his late Majesty King George the Fourth, for consolidating and amending the laws then in force with respect to trade from and to places within the limits of the East India Company's charter, nor the provisions of an act passed in the session of parliament holden in the third and fourth years of her present Majesty, intituled "An Act further to regulate the Trade of Ships built and trading within the Limits of the East India Company's charter."

XVIII. Provided always, and be it enacted, That it shall be lawful for her Majesty, by her royal proclamation during war, to declare that foreigners having served two years on board any of her Majesty's ships-of-war in time of such war shall be British seamen within the meaning of this act.

XIX. And be it enacted, That no British registered ship shall be suffered to depart any port in the United Kingdom, or any British possessions in any part of the world, (whether with a cargo or in ballast,) unless duly navigated: Provided always, that any British ships trading between places in America may be navigated by British negroes, and that ships trading eastward of the Cape of Good Hope, within the limits of the East India Company's charter, may be navigated by Lascars, or other natives of countries within those limits.

XX. And be it enacted, That if any British registered ship shall at any time have as part of the crew in any part of the world any foreign seamen not allowed by law, the master or owners of such ship shall for every such foreign seaman forfeit the sum of ten pounds: Provided always, that if a due proportion of British seamen cannot be procured in any foreign port, or in any place within the limits of the East India Company's charter, for the navigation of any British ship, or if such proportion be destroyed during the voyage by any unavoidable circumstance, and the master of such ship shall produce a certificate of such facts under the hand of any British consul, or of two known British merchants if there be no consul at the place where such facts can be ascertained, or from the British governor of any place within the limits of the East India Company's charter, or in the want of such certificate shall make proof of the truth of such facts to the satisfaction of the collector and comptroller of the customs of any British port, or of any person authorized in any other part of the world to

Ship of any foreign country to be of the build of or prize to such country, or British-built, and owned and navigated by subjects of the country.

Master and seaman not British, unless natural born or naturalized, or denizens, or subjects by conquest or cession, or having served in her Majesty's ships-of-war.

Natives of India not to be British seamen.

One British seaman to twenty tons sufficient to constitute a proper crew.

4 G. 4. c. 80. s. 21.

3 & 4 Vict. c. 56.

Foreigners having served two years on board H. M. S. during war.

British ship not to depart British port unless duly navigated, &c.

Penalty for excess of foreign seamen.

Proportion of  
seamen may be  
altered by  
proclamation.

Goods prohib-  
ited only by  
Navigation  
Law may be  
imported for  
exportation.

Her Majesty  
may, by Order  
in Council, ap-  
point ports in  
the British pos-  
sessions abroad,  
wherein any  
goods imported  
in any vessel  
may be ware-  
housed.

Forfeitures,  
how incurred.

Recovery of  
forfeitures.

inquire into the navigation of such ship, the same shall be deemed to be duly navigated.

XXI. And be it enacted, That if her Majesty shall at any time by her royal proclamation declare that the proportion of British seamen necessary to the due navigation of British ships shall be less than the proportion required by this act, every British ship navigated with the proportion of British seamen required by such proclamation shall be deemed to be duly navigated, so long as such proclamation shall remain in force.

XXII. Provided always, and be it enacted, That goods of any sort, or the produce of any place, not otherwise prohibited than by the law of navigation herein-before contained, may be imported into the United Kingdom from any place in a British ship, and from any place, not being a British possession, in a foreign ship of any country, and however navigated, to be warehoused for exportation only, under the provisions of any law in force for the time being made for the warehousing of goods without payment of duty upon the first entry thereof.

XXIII. And be it enacted, That it shall be lawful for her Majesty from time to time, by any Order in Council, to declare that goods of any sort, or the produce of any place, not otherwise prohibited than by the law of navigation herein-before contained, may be imported into any port or ports of the British possessions abroad, to be named in such order, from any place, in a British ship, and from any place not being a part of the British dominions in a foreign ship of any country, and however navigated, to be warehoused for exportation only, under the provisions of any law in force for the time being, made for the warehousing of goods without payment of duty upon the first entry thereof; and from and after the date of any such order it shall be lawful so to import, for the purpose of being warehoused for exportation only, any such goods into the port or ports named therein, according to the provisions of the said order, and until the revocation thereof; and any such Order in Council may from time to time be altered or revoked by her Majesty by any subsequent Order in Council.

XXIV. And be it enacted, That if any goods be imported, exported, or carried coastwise, contrary to the law of navigation, all such goods shall be forfeited, and the master of the ship in which the same are so imported, exported, or carried coastwise shall forfeit the sum of one hundred pounds.

XXV. And be it enacted, That all penalties and forfeitures incurred under this act shall be sued for, prosecuted, recovered, and disposed of, or shall be mitigated or restored, in like manner as any penalty or forfeiture can be sued for, prosecuted, recovered, and disposed of, or may be mitigated or restored under an act passed in the present session of parliament for the prevention of smuggling.

#### No. XIV.

8 & 9 Vict. c. 89. (4th August, 1845.)

#### *An Act for the registering of British Vessels.*

3 & 4 W. 4.  
c. 55.

Commence-  
ment of act.

WHEREAS an act was passed in the session of parliament held in the third and fourth years of the reign of King William the Fourth, intituled "An Act for the registering of British Vessels," whereby the laws in relation to the registration of British vessels were consolidated: And whereas since the passing of the said act divers parts of acts for the further amendment of the law in that respect have been found necessary, and it will be of advantage to trade and commerce that the said act and parts of acts should be consolidated into one act; be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the same shall come into and continue in full force for the purposes therein mentioned, except where any other commencement is herein particularly directed.

II. And be it enacted, That no ship or vessel shall be entitled to any of the privileges or advantages of a British-registered ship, unless the person or persons claiming property therein shall have caused the same to have been registered in virtue of the said act, or of an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act for registering British Vessels," or of an act passed in the fourth year of his said late Majesty's reign, intituled "An Act for the registering of British Vessels," or until such person or persons shall have caused the same to be registered in manner herein-after mentioned, and shall have obtained a certificate of such registry from the person or persons authorized to make such registry and grant such certificate as herein-after directed; the form of which certificate shall be as follows; (*videlicet*,)

No vessel to enjoy privileges until registered.

6 G. 4. c. 110.

4 G. 4. c. 41.

"This is to certify, that in pursuance of an act passed in the session of parliament holden in the eighth and ninth years of the reign of Queen Victoria, intituled 'An Act' [*here insert the title of this act, the names, occupations, and residence of the subscribing owners*], having made and subscribed the declaration required by the said act, and having declared that [*he or they*], together with [*names, occupations, and residence of non-subscribing owners*] is [*or are*] sole owner [*or owners*] in the proportions specified on the back hereof of the ship or vessel called the [*ship's name*] of [*place to which the vessel belongs*], which is of the burden of [*number of tons*], and whereof [*master's name*] is master, and that the said ship or vessel was [*when and where built, or condemned as prize, referring to builder's certificate, judge's certificate, or certificate of last registry, then delivered up to be cancelled*], and [*name and employment of surveying officer*] having certified to us that the said ship or vessel has [*number*] decks and [*number*] masts, that her length from the inner part of the main stem to the fore part of the stern-post aloft is [*feet tenths*], her breadth in midships is [*feet tenths*], her depth in hold at midships is [*feet tenths*], that she is [*how rigged*] rigged, with a [*standing or running*] bowsprit, is [*description of stern*] sterned [*carvel or clincher*] built, has [*whether any or not*] gallery, and [*kind of head, if any*] head; and the said subscribing owners having consented and agreed to the above description, and having caused sufficient security to be given as required by the said act, the said ship or vessel called the [*name*] has been duly registered at the port of [*name of port*]. Certified under our hands at the custom house in the said port of [*name of port*], this [*date*] day of [*name of month*] in the year [*words at length*].

Form of certificate of registry.

"(Signed)  
"(Signed)

Collector.  
Comptroller."

And on the back of such certificate of registry there shall be an account of the parts or shares held by each of the owners mentioned and described in such certificate, in the form and manner following:

| Names of the several owners within mentioned. |   |   |   | Number of sixty-fourth shares held by each owner. |             |
|---|---|---|---|---|-------------|
| [Name]  | - | - | - | -   | Thirty-two. |
| [Name]  | - | - | - | -   | Sixteen.    |
| [Name]  | - | - | - | -   | Eight.      |
| [Name]  | - | - | - | -   | Eight.      |
| (Signed)                                      |   |   |   | Comptroller.                                      |             |
| (Signed)                                      |   |   |   | Collector.  |             |

III. And be it enacted, That the persons authorized and required to make such registry and grant such certificates shall be the several persons herein-after mentioned and described; (that is to say,)

Persons authorized to make registry, &c.

The collector and comptroller of her Majesty's customs in any port in the United Kingdom of Great Britain and Ireland and in the Isle of Man respectively, in respect of ships or vessels to be there registered:

In United Kingdom and Isle of Man:

The principal officers of her Majesty's customs in the islands of Guernsey or Jersey, together with the governor, lieutenant governor, or commander-in-chief of those islands respectively, in respect of ships or vessels to be there registered:

In Guernsey, &c.:

The collector and comptroller of her Majesty's customs of any port in the British possessions in Asia, Africa, and America, or the collector of any such port at which no appointment of a comptroller has been made, in respect of ships or vessels to be there registered:

In colonies in Asia, Africa, and America:

The collector of duties at any port in the territories under the government of the East India Company, within the limits of the charter of the said Company, or any other person of the rank in the said company's service of

In territories of East India Company:

- senior merchant, or of six years standing in the said service, being respectively appointed to act in the execution of this act by any of the governments of the said company, in respect of ships or vessels to be there registered :
- In other places within limits of the charter of E. I. C. :** The collector of duties at any British possession within the said limits, and not under the government of the said company, and at which a custom house is not established, together with the governor, lieutenant governor, or commander-in-chief of such possession, in respect of ships or vessels to be there registered :
- In Malta, Gibraltar, &c.** The governor, lieutenant governor, or commander-in-chief of Malta, Gibraltar, and Heligoland respectively, in respect of vessels or ships to be there registered :
- Limitation as to vessels registered at Malta, Gibraltar, or Heligoland.** Provided always, that no ship or vessel shall be registered at Heligoland, except such as is wholly of the build of that place, and that ships or vessels registered at Malta, Gibraltar, or Heligoland shall not be registered elsewhere ; and that ships or vessels registered at Malta, Gibraltar, or Heligoland shall not be entitled to the privileges and advantages of British ships in any trade between the said United Kingdom and any of the British possessions in America : Provided also, that wherever in and by this act it is directed or provided that any act, matter, or thing shall and may be done or performed by, to, or with any collector and comptroller of her Majesty's customs, the same shall or may be done or performed by, to, or with the several persons respectively herein-before authorized and required to make registry and to grant certificates of registry as aforesaid, and according as the same act, matter, or thing is to be done or performed at the said several and respective places, and within the jurisdiction of the said several persons respectively : Provided also, that wherever in and by this act it is directed or provided that any act, matter, or thing shall or may be done or performed by, to, or with the commissioners of her Majesty's customs, the same shall or may be done or performed by, to, or with the governor, lieutenant governor, or commander-in-chief of any place where any ship or vessel may be registered under the authority of this act, so far as such act, matter, or thing can be applicable to the registering of any ship or vessel at such place.
- Certain powers of collectors and comptrollers, by whom to be exercised in certain cases.** IV. And be it enacted, That in case any ship or vessel not being duly registered, and not having obtained such certificate of registry as aforesaid, shall exercise any of the privileges of a British ship, the same shall be subject to forfeiture, and also all the guns, furniture, ammunition, tackle, and apparel to the same ship or vessel belonging, and shall and may be seized by any officer or officers of her Majesty's customs : Provided always, that nothing in this act shall extend or be construed to extend to affect the privileges of any ship or vessel duly registered prior to the commencement thereof.
- Powers of Commissioners of Customs in United Kingdom given to governors, &c. abroad.** V. And be it enacted, That no ship or vessel shall be registered, or having been registered shall be deemed to be duly registered by virtue of this act, except such as are wholly of the build of the said United Kingdom, or of the Isle of Man, or of the islands of Guernsey or Jersey, or of some of the colonies, plantations, islands, or territories in Asia, Africa, or America, or of Malta, Gibraltar, or Heligoland, which belonged to her Majesty, her heirs or successors, at the time of the building of such ships or vessels, or such ships or vessels as shall have been condemned in any Court of Admiralty as prize of war, or such ships or vessels as shall have been condemned in any competent court as forfeited for the breach of the laws made for the prevention of the slave trade, and which shall wholly belong and continue wholly to belong to her Majesty's subjects duly entitled to be owners of ships or vessels registered by virtue of this act.
- Ships exercising privileges before registry to be forfeited ;** VI. And be it enacted, That no Mediterranean pass shall be issued for the use of any ship as being a ship belonging to Malta or Gibraltar, except such as be duly registered at those places respectively, or such as, not being entitled to be so registered, shall have wholly belonged, before the tenth day of October one thousand eight hundred and twenty-seven, and shall have continued wholly to belong, to persons actually residing at those places respectively as inhabitants thereof, and entitled to be owners of British ships there registered, or who, not being so entitled, shall have so resided upwards of fifteen years prior to the said tenth day of October one thousand eight hundred and twenty-seven.
- but not to affect vessels registered under previous acts.** VII. And be it enacted, That no ship or vessel shall continue to enjoy the privileges of a British ship after the same shall have been repaired in a foreign country, if such repairs shall exceed the sum of twenty shillings for every ton of the burden of the said ship or vessel, unless such repairs shall have been necessary, by reason of extraordinary damage sustained by such ship or vessel during her absence from her Majesty's dominions, to enable her to perform the voyage
- What ships are entitled to be registered.**
- Mediterranean pass may be issued at Malta or Gibraltar for certain ships only.**
- Ships disqualified if foreign repairs exceed 20s. per ton,**



in which she shall have been engaged, and to return to some port or place in the said dominions; and whenever any ship or vessel which has been so repaired in a foreign country shall arrive at any port in her Majesty's dominions as a British-registered ship or vessel, the master or other person having the charge or command of the same shall, upon the first entry thereof, report to the collector and comptroller of her Majesty's Customs at such port that such ship or vessel has been so repaired, under penalty of twenty shillings for every ton of the burden of such ship or vessel, according to the admeasurement thereof; and if it shall be proved to the satisfaction of the commissioners of her Majesty's Customs that such ship or vessel was seaworthy at the time when she last departed from any port or place in her Majesty's dominions, and that no greater quantity of such repairs have been done to the said vessel than was necessary as aforesaid, it shall be lawful for the said commissioners, upon a full consideration of all the circumstances, to direct the collector and comptroller of the port where such ship or vessel shall have arrived, or where she shall then be, to certify on the certificate of the registry of such ship or vessel that it has been proved to the satisfaction of the Commissioners of her Majesty's Customs that the privileges of the said ship or vessel have not been forfeited, notwithstanding the repairs which have been done to the same in a foreign country.

VIII. And be it enacted, That if any ship or vessel registered under the authority of this or any other act shall be deemed or declared to be stranded or unseaworthy, and incapable of being recovered or repaired to the advantage of the owners thereof, and shall for such reasons be sold by order or decree of any competent Court for the benefit of the owners of such ship or vessel or other persons interested therein, the same shall be taken and deemed to be a ship or vessel lost or broken up to all intents and purposes within the meaning of this act, and shall never again be entitled to the privileges of a British-built ship for any purposes of trade or navigation.

IX. And be it enacted, That no British ship or vessel which has been or shall hereafter be captured by and become prize to an enemy, or sold to foreigners, shall again be entitled to the privileges of a British ship: Provided always, that nothing contained in this act shall extend to prevent the registering of any ship or vessel whatever which shall afterwards be condemned in any Court of Admiralty as prize of war, or in any competent Court, for breach of laws made for the prevention of the slave trade.

X. And be it enacted, That no such registry shall hereafter be made, or certificate thereof granted, by any person or persons herein-before authorized to make such registry and grant such certificate, in any other port or place than the port or place to which such ship or vessel shall properly belong, except so far as relates to such ships or vessels as shall be condemned as prizes in any of the islands of Guernsey, Jersey, or Man, which ships or vessels shall be registered in manner herein-after directed; but all and every registry and certificate made and granted in any port or place to which any such ship or vessel does not properly belong shall be utterly null and void to all intents and purposes, unless the officers aforesaid shall be specially authorized and empowered to make such registry and grant such certificate in any other port by an order in writing under the hands of the Commissioners of her Majesty's Customs, which order the said Commissioners are hereby authorized and empowered to issue if they shall see fit; and at every port where registry shall be made in pursuance of this act a book shall be kept by the collector and comptroller, in which all the particulars contained in the form of the certificate of the registry herein-before directed to be used shall be duly entered; and every registry shall be numbered in progression, beginning such progressive numeration at the commencement of each and every year; and such collector and comptroller shall forthwith, or within one month at the furthest, transmit to the Commissioners of her Majesty's Customs a true and exact copy, together with the number of every certificate which shall be by them so granted.

XI. And be it enacted, That every ship or vessel shall be deemed to belong to some port at or near to which some or one of the owners, who shall make and subscribe the declaration required by this act before registry be made, shall reside; and whenever such owner or owners shall have transferred all his or their share or shares in such ship or vessel, the same shall be registered *de novo* before such ship or vessel shall sail or depart from the port to which she shall then belong, or from any other port which shall be in the same part of the United Kingdom, or the same colony, plantation, island, or territory, as the said port shall be in: Provided always, that if the owner or owners of such ship or vessel cannot in sufficient time comply with the requisites of this act, so that registry

unless the necessity of such repairs be proved to Commissioners of Customs.

Ships declared unseaworthy to be deemed ships lost or broken up.

British ships captured not to be again entitled to registry; but ships condemned in Courts of Admiralty may be registered.

Ships shall be registered at the port to which they belong.

Commissioners of Customs may permit registry at other ports.

Book of registers to be kept, and accounts to be transmitted to Commissioners.

Port to which vessels shall be deemed to belong.

Change of subscribing owner to require registry *de novo*.

If registry *de novo* cannot be made, ship may

go one voyage with permission endorsed on certificate of registry.

Ships built in foreign possessions for owners resident in United Kingdom may have a certificate from the collector, &c. to trade for two years or until arrival in United Kingdom.

Foreigners and persons residing in foreign countries may not be owners, unless members of British factories, or agents for or partners in British houses.

Declaration to be made by subscribing owners previous to registry.

Form of declaration.

may be made before it shall be necessary for such ship or vessel to sail or depart upon another voyage, it shall be lawful for the collector and comptroller of the port where such ship or vessel may then be to certify upon the back of the existing certificate of registry of such ship or vessel that the same is to remain in force for the voyage upon which the said ship or vessel is then about to sail or depart: Provided also, that if any ship or vessel shall be built in any of the colonies, plantations, islands, or territories in Asia, Africa, or America, to her Majesty belonging, for owners residing in the United Kingdom, and the master of such ship or vessel, or the agent for the owner or owners thereof, shall have produced to the collector and comptroller of the port at or near to which such ship or vessel was built the certificate of the builder required by this act, and shall have made and subscribed a declaration before such collector and comptroller of the names and descriptions of the principal owners of such ship or vessel, and that she is the identical ship or vessel mentioned in such certificate of the builder, and that no foreigner, to the best of his knowledge and belief, has any interest therein, the collector and comptroller of such port shall cause such ship or vessel to be surveyed and measured in like manner as is directed for the purpose of registering any ship or vessel, and shall give the master of such ship or vessel a certificate under their hands and seals, purporting to be under the authority of this act, and stating when and where and by whom such ship or vessel was built, the description, tonnage, and other particulars required on registry of any ship or vessel, and such certificate shall have all the force and virtue of a certificate of registry under this act, during the term of two years, unless such ship shall sooner arrive at some place in the United Kingdom; and such collector and comptroller shall transmit a copy of such certificate to the Commissioners of her Majesty's Customs.

XII. And be it enacted, That no person who has taken the oath of allegiance to any foreign state, except under the terms of some capitulation, unless he shall afterwards become a denizen or naturalised subject of the United Kingdom by her Majesty's letters patent or by act of parliament, nor any person usually residing in any country not under the dominion of her Majesty, her heirs and successors, unless he be a member of some British factory, or agent for or partner in any house or copartnership actually carrying on trade in Great Britain or Ireland, shall be entitled to be the owner, in whole or in part, directly or indirectly, of any ship or vessel required and authorized to be registered by virtue of this act.

XIII. And be it enacted, That no registry shall henceforth be made or certificate granted until the following declaration be made and subscribed, before the person or persons herein-before authorized to make such registry and grant such certificate respectively, by the owner of such ship or vessel if such ship or vessel is owned by or belongs to one person only, or in case there shall be two joint owners, then by both of such joint owners if both shall be resident within twenty miles of the port or place where such registry is required, or by one of such owners if one or both of them shall be resident at a greater distance from such port or place, or if the number of such owners or proprietors shall exceed two, then by the greater part of the number of such owners or proprietors if the greater number of them shall be resident within twenty miles of such port or place as aforesaid, not in any case exceeding three of such owners or proprietors, unless a greater number shall be desirous to join in making and subscribing the said declaration, or by one of such owners if all, or all except one, shall be resident at a greater distance:

"I A. B. of [place of residence and occupation] do truly declare, that the ship or vessel [name] of [port or place], whereof [master's name] is at present master, being [kind of build, burden, &c. &c.], as described in the certificate of the surveying officer, was [when and where built, or, if prize or forfeited, capture and condemnation as such], and that I the said A. B. [and the other owners names and occupations, if any, and where they respectively reside, (videlicet), town, place, or parish, and county, or if member of and resident in any factory in foreign parts, or in any foreign town or city, being an agent for or partner in any house or copartnership actually carrying on trade in Great Britain or Ireland, the name of such factory, foreign town, or city, and the names of such house or copartnership] am [or are] sole owner [or owners] of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share, or property therein or thereto; and that I the said A. B. [and the said other owners, if any,] am [or are] truly and bona fide a subject [or subjects] of Great Britain, and that I the said A. B. have not [nor have any of the other owners, to the best of my knowledge and belief,] taken the oath of allegiance to any foreign state whatever [except under the terms of some capitulation, describing

*the particulars thereof*], or that since my taking [or his or their taking] the oath of allegiance to [naming the foreign states respectively to which he or any of the said owners shall have taken the same] I have [or he or they hath or have] become a denizen [or denizens, or naturalised subject or subjects, as the case may be,] of the United Kingdom of Great Britain and Ireland by her Majesty's letters patent, or by an act of parliament [naming the times when such letters of denisation have been granted respectively, or the year or years in which such act or acts for naturalisation have passed respectively], and that no foreigner, directly or indirectly, hath any share or part interest in the said ship or vessel:”

Provided always, that if it shall become necessary to register any ship or vessel belonging to any corporate body in the United Kingdom, the following declaration in lieu of the declaration herein-before directed shall be taken and subscribed by the secretary or other proper officer of such corporate body; (that is to say,)

“ I A. B., secretary [or officer] of [name of company or corporation], do truly declare, that the ship or vessel [name] of [port] whereof [master's name] is at present master, being [kind of build, burden, et cætera, as described in the certificate of the surveying officer] was [when and where built, or, if prize or forfeited, capture and condemnation as such], and that the same doth wholly and truly belong to [name of company or corporation].”

Declaration by Corporation.

XIV. And be it enacted, That in case the required number of joint owners or proprietors of any ship or vessel shall not personally attend to make and subscribe the declaration herein-before directed to be made and subscribed, then and in such case such owner or owners, proprietor or proprietors, as shall personally attend and make and subscribe the declaration aforesaid, shall further declare that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not, to the best of his or their knowledge or belief, wilfully absented himself or themselves in order to avoid the making the declaration herein-before directed to be made and subscribed, or is or are prevented by illness from attending to make and subscribe the said declaration.

Addition to declaration in case the required number of owners do not attend.

XV. And in order to enable the collector and comptroller of her Majesty's Customs to grant a certificate truly and accurately describing every ship or vessel to be registered in pursuance of this act, and also to enable all other officers of her Majesty's Customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted, be it enacted, That previous to the registering or granting of any certificate of registry as aforesaid some one or more person or persons appointed by the Commissioners of her Majesty's Customs (taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships,) shall go on board of every such ship or vessel as is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel as to all and every particular contained in the form of the certificate herein-before directed, in the presence of the master or of any other person who shall be appointed for that purpose on the part of the owner or owners, or in his or their absence by the said master, and shall deliver a true and just account in writing of all such particulars of the build, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited to the collector and comptroller authorized as aforesaid to make such registry and grant such certificate of registry; and the said master or other person attending on the part of the owner or owners is hereby required to sign his name also to the certificate of such surveying or examining officer, in testimony of the truth thereof, provided such master or other person shall consent and agree to the several particulars set forth and described therein.

Survey.

Vessels to be surveyed previous to registry.

Certificate of survey to be given.

Owner or master concurring therein.

XVI. And be it enacted, that from and after the commencement of this act the tonnage of every ship or vessel required by law to be registered shall, previous to her being registered, be measured and ascertained while her hold is clear, and according to the following rule; (that is to say,) divide the length of the upper deck between the after part of the stem and the fore part of the stern-post into six equal parts; depths, at the foremost, the middle, and the aftermost of those points of division, measure in feet and decimal parts of a foot the depths from the under side of the upper deck to the ceiling at the limber strake; in the case of a break in the upper deck the depths are to be measured from a line stretched in a continuation of the deck; breadths, divide each of those three depths into five equal parts, and measure the inside breadths at the following points; (*videlicet*,) at one fifth and at four fifths from the upper deck of the foremost and aftermost depths, and at two fifths and four fifths from the upper deck of the midship depth;

The rule by which tonnage of vessels is to be ascertained.

|  |   |
|--|---|
| Survey.<br>—   | length, at half the midship depth measure the length of the vessel from the after part of the stem to the fore part of the stern-post; then to twice the midship depth add the foremost and the aftermost depths for the sum of the depths; add together the upper and lower breadths at the foremost division, three times the upper breadth and the lower breadth at the midship division, and the upper and twice the lower breadth at the after division, for the sum of the breadths; then multiply the sum of the depths by the sum of the breadths, and this product by the length, and divide the final product by three thousand five hundred, which will give the number of tons for register; if the vessel have a poop or half deck or a break in the upper deck, measure the inside mean length, breadth, and height of such part thereof as may be included within the bulkhead; multiply these three measurements together, and dividing the product by 92.4, the quotient will be the number of tons to be added to the result as above found; in order to ascertain the tonnage of open vessels the depths are to be measured from the upper edge of the upper strake. |
| Mode of ascertaining tonnage of steam-vessels.   | XVII. Provided always, and be it enacted, that in each of the several rules herein-before prescribed, when applied for the purpose of ascertaining the tonnage of any ship or vessel propelled by steam, the tonnage due to the cubical contents of the engine room shall be deducted from the total tonnage of the vessel as determined by either of the rules aforesaid, and the remainder shall be deemed the true register tonnage of the said ship or vessel; the tonnage due to the cubical contents of the engine room shall be determined in the following manner; (that is to say,) measure the inside length of the engine room in feet and decimal parts of a foot from the foremost to the aftermost bulkhead, then multiply the said length by the depth of the ship or vessel at the midship division as aforesaid, and the product by the inside breadth at the same division at two fifths of the depth from the deck, taken as aforesaid, and divide the last product by 92.4, and the quotient shall be deemed the tonnage due to the cubical contents of the engine room.  |
| Length and cubical contents of engine room to be set forth in description of steam-vessel. | XVIII. Provided always, and be it enacted, that the tonnage due to the cubical contents of the engine room, and also the length of the engine room, shall be set forth in the certificate of registry as part of the description of the ship or vessel, and that any alteration of such tonnage due to the cubical contents of the engine room, or of such length of the engine room after registry, shall be deemed to be an alteration requiring registry de novo within the meaning of this act.   |
| Rule for measuring ships with cargoes on board.  | XIX. And be it enacted, that for the purpose of ascertaining the tonnage of all such ships as there shall be occasion to measure while their cargoes are on board, the following rule shall be observed, and is hereby established; (that is to say,) measure first the length on the upper deck between the after part of the stem and the fore part of the stern-post; secondly, the inside breadth on the under side of the upper deck at the middle point of the length; and, thirdly, the depth from the under side of the upper deck down the pump well to the skin; multiply these three dimensions together, and divide the product by one hundred and thirty, and the quotient will be the amount of the register tonnages of such ships, if the vessel have a poop or half deck or a break in the upper deck, measure the inside mean length, breadth, and height of such part thereof as may be included within the bulkhead, multiply these three measurements together, and, dividing the product by ninety-two and four tenths, the quotient will be the number of tons to be added to the result above found.  |
| Amount of registered tonnage to be carved on main beam.                                    | XX. And be it enacted, that the true amount of the register tonnage of every ship or vessel required by law to be registered, ascertained according to the rule by this act established, shall be deeply carved or cut in figures at least three inches in length on the main beam of every such ship or vessel prior to her being registered.  |
| Not to alter tonnage of vessels already registered.  | XXI. And be it enacted, that nothing herein contained shall extend to alter the present measure of tonnage of any ship or vessel which shall have been registered prior to the commencement of this act, unless in cases where the owners of any such ships shall require to have their tonnage established according to the rule herein-before provided, or unless there shall be occasion to have any such ship admeasured again on account of any alteration which shall have been made in the form or burden of the same, in which cases only such ships shall be re-admeasured according to the said rule, and their tonnage registered accordingly.   |
| Tonnage when so ascertained to be ever after deemed the tonnage.                           | XXII. And be it enacted, that whenever the tonnage of any ship or vessel shall have been ascertained according to the rules herein prescribed, such account of tonnage shall ever after be deemed the tonnage of such ship or vessel, and shall be repeated in every subsequent registry of such ship or vessel, unless it shall happen that any alteration has been made in the form and burden of such ship or  |

vessel, or it shall be discovered that the tonnage of such ship or vessel had been erroneously taken and computed.

XXIII. And be it enacted, that at the time of the obtaining of the certificate of registry as aforesaid sufficient security by bond shall be given to her Majesty, her heirs and successors, by the master and such of the owners as shall personally attend as is herein-before required, such security to be approved of and taken by the person or persons herein-before authorized to make such registry, and grant such certificate of registry, at the port or place in which such certificate shall be granted, in the penalties following; (that is to say,) if such ship or vessel shall be a decked vessel, or be above the burden of fifteen tons, and not exceeding fifty tons, then in the penalty of one hundred pounds; if exceeding the burden of fifty tons, and not exceeding one hundred tons, then in the penalty of three hundred pounds; if exceeding the burden of one hundred tons, and not exceeding two hundred tons, then in the penalty of five hundred pounds; if exceeding the burden of two hundred tons, and not exceeding three hundred tons, then in the penalty of eight hundred pounds; and if exceeding the burden of three hundred tons, then in the penalty of one thousand pounds; and the condition of every such bond shall be, that such certificate shall not be sold, lent, or otherwise disposed of to any person or persons whatever, and that the same shall be solely made use of for the service of the ship or vessel for which it is granted; and that in case such ship or vessel shall be lost or taken by the enemy, burnt or broken up, or otherwise prevented from returning to the port to which she belongs, or shall on any account have lost and forfeited the privileges of a British ship, or shall have been seized and legally condemned for illicit trading, or shall have been taken in execution for debt, and sold by due process of law, or shall have been sold to the Crown, or shall under any circumstances have been registered *de novo* the certificate, if preserved, shall be delivered up within one month after the arrival of the master in any port or place in her Majesty's dominions to the collector and comptroller of some port in Great Britain, or of the Isle of Man, or of the British plantations, or to the Governor, Lieutenant-Governor, or Commander-in-chief for the time being of the islands of Guernsey or Jersey; and that if any foreigner or any person or persons for the use and benefit of any foreigner, shall purchase or otherwise become entitled to the whole or to any part or share of or any interest in such ship or vessel, and the same shall be within the limits of any port of Great Britain, or of the islands of Guernsey, Jersey, or Man, or of the British colonies, plantations, islands, or territories aforesaid, then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel, be delivered up to the person or persons herein-before authorized to make registry, and grant certificate of registry, at such port or place respectively as aforesaid; and if such ship or vessel shall be in any foreign port when such purchase or transfer of property shall take place, then that the certificate shall be delivered up to the British consul or other chief British officer resident at or nearest to such foreign port, or if such ship or vessel shall be at sea when such purchase or transfer of property shall take place, then that the certificate shall be delivered up to the British consul or other chief British officer at the foreign port or place in or at which the master or other person having or taking the charge or command of such ship or vessel shall first arrive after such purchase or transfer of property at sea, immediately after his arrival at such foreign port; but if such master or other person who had the command thereof at the time of such purchase or transfer of property at sea shall not arrive at a foreign port, but shall arrive at some port of Great Britain, or of the islands of Guernsey, Jersey, or Man, or of her Majesty's said colonies, plantations, islands, or territories, then that the certificate shall be delivered up in manner aforesaid within fourteen days after the arrival of such ship or vessel, or of the person who had the command thereof in any port of Great Britain, or of the islands of Guernsey, Jersey, or Man, or of any of her Majesty's said colonies, plantations, islands, or territories: Provided always, that if it shall happen that at the time of registry of any ship or vessel the same shall be at any other port than the port to which she belongs, so that the master of such ship or vessel cannot attend at the port of registry to join with the owner or owners in such bond as aforesaid, it shall be lawful for him to give a separate bond to the like effect at the port where such ship or vessel may then be, and the collector and comptroller of such other port shall transmit such bond to the collector and comptroller of the port where such ship or vessel is to be registered; and such bond, and the bond also given by the owner or owners, shall together be of the same effect against the master and owner and owners, or either of them, as if they had bound themselves jointly and severally in one bond.

*Registry.*

Bond to be given at the time of registry.

Conditions that the certificate shall be solely made use of for the service of the vessel, or given up to be cancelled, in certain cases.

If ship at the time of registry be at any other port than that of registry, the master may there give bond.

*Registry.*

When master is changed, new master to give similar bond, and his name to be endorsed on certificate of registry.

Bonds liable to same duties as bonds for Customs.

Certificate of registry to be given up by all persons as directed by the bond.

Name of vessel which has been registered never afterwards to be changed, and to be painted on the stern.

Penalty for omission, 100*l*.

Builder's certificate of particulars of ship.

Declaration to be made thereto.

Power to Commissioners of Customs to dispense with builder's certificate.

XXIV. And be it enacted, that when and so often as the master or other person having or taking the charge or command of any ship or vessel, registered in manner herein-before directed, shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons herein-before authorized to make such registry, and grant such certificates of registry, at the port where such change shall take place, the certificate of registry belonging to such ship or vessel, who shall thereupon endorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this act, who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the Commissioners of her Majesty's Customs: Provided always, that before the name of such new master shall be endorsed on the certificate of registry he shall be required to give and shall give a bond in the like penalties and under the same conditions as are contained in the bond herein-before required to be given at the time of registry of any ship or vessel.

XXV. And be it enacted, that all bonds required by this act shall be liable to the same duties of stamps as bonds given for or in respect of the duties of Customs are or shall be liable to under any act for the time being in force for granting duties of stamps.

XXVI. And be it enacted, that if any person whatever shall at any time have possession of and wilfully detain any certificate of registry granted under this or any other act, which ought to be delivered up to be cancelled, according to any of the conditions of the bond herein-before required to be given upon the registry of any ship or vessel, such person is hereby required and enjoined to deliver up such certificate of registry in manner directed by the conditions of such bond in the respective cases and under the respective penalties therein provided.

XXVII. And be it enacted, that it shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this or any other act; and the owner or owners of all and every ship or vessel which shall be so registered shall, before such ship or vessel after such registry shall begin to take in any cargo, paint or cause to be painted in white or yellow letters, of a length of not less than four inches, upon a black ground, upon some conspicuous part of the stern, the name by which such ship or vessel shall have been registered, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same; and if such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall permit such ship or vessel to begin to take in any cargo before the name of such ship or vessel has been so painted as aforesaid, or shall wilfully alter, erase, obliterate, or in anywise hide or conceal, or cause or procure or permit the same to be done, (unless in the case of square-rigged vessels in time of war,) or shall, in any written or printed paper or other document describe such ship or vessel by any name other than that by which she was first registered, or shall verbally describe or cause or procure or permit such ship or vessel to be described by any other name to any officer or officers of her Majesty's revenue in the due execution of his or their duty, then and in every such case such owner or owners, or master or other person having or taking the charge or command of such ship or vessel, shall forfeit the sum of one hundred pounds.

XXVIII. And be it enacted, that all and every person and persons who shall apply for a certificate of the registry of any ship or vessel shall and they are hereby required to produce to the person or persons authorized to grant such certificate a true and full account, under the hand of the builder of such ship or vessel, of the proper denomination of such vessel, and of the time when and the place where such ship or vessel was built, and also an exact account of the tonnage of such ship or vessel, together with the name of the first purchaser or purchasers thereof, (which account such builder is hereby directed and required to give under his hand, on the same being demanded by such person or persons so applying for a certificate as aforesaid,) and shall also make and subscribe a declaration before the person or persons herein-before authorized to grant such certificate that the ship or vessel for which such certificate is required is the same with that which is so described by the builder as aforesaid: Provided always, that where by reason of the death of such builder, or some other unavoidable cause, such certificate cannot be produced, it shall be lawful for the Commissioners of her Majesty's Customs, on proof being made to their satisfaction of all the particulars required as aforesaid, to dispense with the account hereby required under the hand of the builder, and to allow the certificate of registry to be granted.

XXIX. And be it enacted, that if the certificate of registry of any ship or vessel shall be lost or mislaid so that the same cannot be found or obtained for the use of such ship or vessel when needful, and proof thereof shall be made to the satisfaction of the Commissioners of her Majesty's Customs, such Commissioners shall and may permit such ship or vessel to be registered *de novo*, and a certificate thereof to be granted: Provided always, that if such ship or vessel be absent and far distant from the port to which she belongs, or by reason of the absence of the owner or owners, or of any other impediment, registry of the same cannot then be made in sufficient time, such Commissioners shall and may grant a licence for the present use of such ship or vessel, which licence shall, for the time and to the extent specified therein, and no longer, be of the same force and virtue as a certificate of registry: Provided also, that before such registry *de novo* be made the owner or owners and master shall give bond to the Commissioners aforesaid, in such sum as to them shall seem fit, with a condition that if the certificate of registry shall at any time afterwards be found the same shall be forthwith delivered to the proper officers of her Majesty's Customs to be cancelled, and that no illegal use has been or shall be made thereof with his or their privy or knowledge; and further, that before any such licence shall be granted as aforesaid the master of such ship or vessel shall also make and subscribe a declaration that the same has been registered as a British ship, naming the port where and the time when such registry was made, and all the particulars contained in the certificate thereof, to the best of his knowledge and belief, and shall also give such bond and with the same condition as is herein-before mentioned: Provided also, that before any such licence shall be granted such ship or vessel shall be surveyed in like manner as if a registry *de novo* were about to be made thereof, and the certificate of such survey shall be preserved by the collector and comptroller of the port to which such ship or vessel shall belong; and in virtue thereof it shall be lawful for the said Commissioners and they are hereby required to permit such ship or vessel to be registered after her departure, whenever the owner or owners shall personally attend to take and subscribe the declaration required by this act before registry be made, and shall also comply with all other requisites of this act, except so far as relates to the bond to be given by the master of such ship or vessel, which certificate or registry the said Commissioners shall and may transmit to the collector and comptroller of any other port, to be by them given to the master of such ship or vessel upon his giving such bond, and delivering up the licence which had been granted for the then present use of such ship or vessel.

*Registry.*

Certificate of registry lost or mislaid.

Commissioners may permit registry *de novo*, or grant licence.

XXX. And whereas it is not proper that any person, under any pretence whatever, should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted; be it therefore enacted, that in case any person who shall have received or obtained, by any means or for any purpose whatever, the certificate of the registry of any ship or vessel, (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel or not,) shall wilfully detain and refuse to deliver up the same to the proper officers of her Majesty's Customs for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual command, possession and management of such ship or vessel as the ostensible and reputed master, or as the ostensible and reputed owner or owners thereof, it shall be lawful to and for any such last-mentioned person to make complaint, on oath, of such detainer and refusal to any justice of the peace residing near to the place where such detainer and refusal shall be in Great Britain or Ireland, or to any member of the supreme court of justice, or to any deemster or justice of the peace, in the islands of Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory to her Majesty belonging in Asia, Africa, or America, or in Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last mentioned; and on such complaint the said justice or other magistrate shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of such person, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be thereof convicted, and shall forfeit and pay the sum of one hundred pounds, and on failure of payment thereof he shall be committed to the common gaol, there to remain without bail or mainprize for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than three months nor more than twelve months; and the said justice or other magistrate shall certify the aforesaid detainer, refusal, and conviction to the person or

Persons detaining certificate of registry to forfeit 100*l*.

*Registry.*

Ship altered in certain manner to be registered de novo.

Vessels condemned as prize, or for breach of laws against slave trade, certificate of condemnation to be produced

Prize vessels not to be registered at Guernsey, Jersey, or Man, but at certain ports.

*Transfers.*

Transfer of interest to be made by bill of sale.

Property in ships to be divided into sixty-four parts or shares.

persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel de novo, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which such ship or vessel was so registered de novo; and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the justice or other magistrate cannot be executed upon him, and proof thereof shall be made to the satisfaction of the Commissioners of her Majesty's Customs, it shall be lawful for the said Commissioners to permit such ship or vessel to be registered de novo, or otherwise, in their discretion, to grant a licence for the present use of such ship or vessel, in like manner as is herein-before provided in the case wherein the certificate of registry is lost or mislaid.

XXXI. And be it enacted, that if any ship or vessel, after she shall have been registered, shall in any manner whatever be altered so as not to correspond with all the particulars contained in the certificate of her registry, in such case such ship or vessel shall be registered de novo, in manner herein-before required, as soon as she returns to the port to which she belongs, or to any other port which shall be in the same part of the United Kingdom, or in the same colony, plantation, island, or territory as the said port shall be in, on failure whereof such ship or vessel shall to all intents and purposes be considered and deemed and taken to be a ship or vessel not duly registered.

XXXII. And be it enacted, that the owner or owners of all ships and vessels taken by any of her Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any Court of Admiralty, or of ships or vessels condemned in any competent Court as forfeited for breach of the laws for the prevention of the slave trade, shall, for the purpose of registering any such ship or vessel, produce to the collector and comptroller of her Majesty's Customs a certificate of the condemnation of such ship or vessel under the hand and seal of the Judge of the Court in which such ship or vessel shall have been condemned (which certificate such Judge is hereby authorized and required to grant), and also a true and exact account in writing of all the particulars contained in the certificate herein-before set forth, to be made and subscribed by one or more skilful person or persons to be appointed by the Court then and there to survey such ship or vessel, and shall also make and subscribe a declaration before the collector and comptroller that such ship or vessel is the same vessel which is mentioned in the certificate of the Judge aforesaid.

XXXIII. Provided always, and be it enacted, that no ship or vessel which shall be taken and condemned as prize or forfeiture as aforesaid shall be registered in the islands of Guernsey, Jersey, or Man, although belonging to her Majesty's subjects residing in those islands, or in some one or other of them, but the same shall be registered either at Southampton, Weymouth, Exeter, Plymouth, Falmouth, Liverpool, or Whitehaven by the collector and comptroller at such ports respectively, who are hereby authorized and required to register such ship or vessel, and to grant a certificate thereof in the form and under the regulations and restrictions in this act contained.

XXXIV. And be it enacted, That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of her Majesty's subjects, shall, after registry thereof, be sold to any other or others of her Majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid or effectual for any purpose whatever either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby.

XXXV. And be it enacted, That the property in every ship or vessel of which there are more than one owner shall be taken and considered to be divided into sixty-four equal parts or shares, and the proportion held by each owner shall be described in the registry as being a certain number of sixty-fourth parts or shares, and that no person shall be entitled to be registered as an owner of any ship or vessel in respect of any proportion of such ship or vessel which shall not be an integral sixty-fourth part or share of the same; and upon the first registry of any ship or vessel, the owner or owners who shall take and subscribe the declaration required by this act before registry be made shall also declare the number of such parts or shares then held by each owner, and the same shall be so registered ac-



cordingly: Provided always, that if it shall at any time happen that the property of any owner or owners in any ship or vessel cannot be reduced by division into any number of integral sixty-fourth parts or shares, it shall and may be lawful for the owner or owners of such fractional parts as shall be over and above such number of integral sixty-fourth parts or shares into which such property in any ship or vessel can be reduced by division to transfer the same one to another, or jointly to any new owner, by memorandum upon their respective bills of sale, or by fresh bill of sale, without such transfer being liable to any stamp duty: Provided also, that the right of any owner or owners to any such fractional parts shall not be affected by reason of the same not having been registered: Provided also, that it shall be lawful for any number of such owners named and described in such registry, being partners in any house or copartnership actually carrying on trade in any part of her Majesty's dominions, to hold any ship or vessel, or any share or shares of any ship or vessel, in the name of such house or copartnership, as joint-owners thereof, without distinguishing the proportionate interest of each of such owners; and that such ship or vessel, or the share or shares thereof so held in copartnership, shall be deemed and taken to be partnership property to all intents and purposes, and shall be governed by the same rules both in law and equity as relate to and govern all other partnership property in any other goods, chattels, and effects whatsoever.

*Transfers.*

XXXVI. And be it enacted, That no greater number than thirty-two persons shall be entitled to be legal owners at one and the same time of any ship or vessel as tenants in common, or to be registered as such: Provided always, that nothing herein contained shall affect the equitable title of minors, heirs, legatees, creditors, or others, exceeding that number, duly represented by or holding from any of the persons within the said number registered as legal owners of any share or shares of such ship or vessel: Provided also, that if it shall be proved to the satisfaction of the Commissioners of her Majesty's Customs that any number of persons have associated themselves as a Joint Stock Company for the purpose of owning any ship or vessel, or any number of ships or vessels, as the joint property of such company, and that such company have duly elected or appointed any number not less than three of the members of the same to be trustees of the property in such ship or vessel or ships or vessels so owned by such company, it shall be lawful for such trustees, or any three of them, with the permission of such commissioners, to make and subscribe the declaration required by this act before registry be made, except that instead of stating therein the names and descriptions of the other owners they shall state the name and description of the company to which such ship or vessel or ships or vessels shall in such manner belong.

Only thirty-two persons to be owners of any ship at one time.

Joint stock companies.

Trustees may apply to have registry made.

XXXVII. And be it enacted, That no bill of sale or other instrument in writing shall be valid and effectual to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale or other instrument in writing shall have been produced to the collector and comptroller of the port at which such ship or vessel is already registered, or to the collector and comptroller of any other port at which she is about to be registered de novo, as the case may be, nor until such collector and comptroller respectively shall have entered in the book of such last registry in the one case, or in the book of such registry de novo, after all the requisites of law for such registry de novo shall have been duly complied with, in the other case, (and which they are respectively hereby required to do upon the production of the bill of sale or other instrument for that purpose,) the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor if more than one, the number of shares transferred, the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee if more than one, and the date of the bill of sale or other instrument and of the production of it; and further, if such ship or vessel is not about to be registered de novo, the collector and comptroller of the port where such ship is registered shall and they are hereby required to endorse the aforesaid particulars of such bill of sale or other instrument on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; (videlicet,)

Bills of sale not effectual until produced to officers of Customs, and entered in the book of registry or of intended registry.

" Custom House [port and date.]  
 "[Name, residence, and description of vendor or mortgagor] has transferred by [bill of sale or other instrument], dated [date; number of shares] to [name, residence, and description of purchaser or mortgagee].  
 A. B. Collector.  
 C. D. Comptroller."

Form of endorsement.

And forthwith to give notice thereof to the Commissioners of Customs; and in case the collector and comptroller shall be desired so to do, and the bill of sale

*Transfers.*

Entry of bill of sale to be valid, except in certain cases.

When a bill of sale has been entered for any shares, thirty days shall be allowed for endorsing the certificate of registry before any other bill of sale for the same shall be entered.

Nature of the priority intended in this act.

Provision in case certificate be mislaid.

or other instrument shall be produced to them for that purpose, then the said collector and comptroller are hereby required to certify by endorsement upon the bill of sale or other instrument that the particulars before mentioned have been so entered in the book of registry, and endorsed upon the certificate of registry as aforesaid.

XXXVIII. And be it enacted, That when and so soon as the particulars of any bill of sale or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the said bill of sale or other instrument shall be valid and effectual to pass the property thereby intended to be transferred as against all and every person and persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees who shall first procure the endorsement to be made upon the certificate of registry of such ship or vessel in manner herein-after mentioned.

XXXIX. And be it enacted, That when and after the particulars of any bill of sale or other instrument by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry as aforesaid, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale or instrument purporting to be a transfer by the same vendor or mortgagor or vendors or mortgagors of the same ship or vessel, share or shares thereof, to any other person or persons, unless thirty days shall elapse from the day on which the particulars of the former bill of sale or other instrument were entered in the book of registry, or in case the ship or vessel was absent from the port to which she belonged at the time when the particulars of such former bill of sale or other instrument were entered in the book of registry, then unless thirty days shall have elapsed from the day on which the ship or vessel arrived at the port to which the same belonged; and in case the particulars of two or more such bills of sale or other instruments as aforesaid shall at any time have been entered in the book of registry of the said ship or vessel, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale or other instrument as aforesaid, unless thirty days shall in like manner have elapsed from the day on which the particulars of the last of such bills of sale or other instrument were entered in the books of registry, or from the day on which the ship or vessel arrived at the port to which she belonged, in case of her absence as aforesaid; and in every case where there shall at any time happen to be two or more transfers by the same owner or owners of the same property in any ship or vessel entered in the book of registry as aforesaid, the collector and comptroller are hereby required to endorse upon the certificate of registry of such ship or vessel the particulars of that bill of sale or other instrument under which the person or persons claims or claim property, who shall produce the certificate of registry for that purpose within thirty days next after the entry of his said bill of sale or other instrument in the book of registry as aforesaid, or within thirty days next after the return of the said ship or vessel to the port to which she belongs, in case of her absence at the time of such entry as aforesaid; and in case no person or persons shall produce the certificate of registry within either of the said spaces of thirty days, then it shall be lawful for the collector and comptroller, and they are hereby required, to endorse upon the certificate of registry the particulars of the bill of sale or other instrument to such person or persons as shall first produce the certificate of registry for that purpose, it being the true intent and meaning of this act that the several purchasers and mortgagees of such ship or vessel, share or shares thereof, when more than one appear to claim the same property, or to claim security on the same property, in the same rank and degree, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale or other instrument by which such property was transferred to them were entered in the book of registry as aforesaid, but according to the time when the endorsement is made upon the certificate of registry as aforesaid: Provided always, that if the certificate of registry shall be lost or mislaid, or shall be detained by any person whatever, so that the endorsement cannot in due time be made thereon, and proof thereof shall be made by the purchaser or mortgagee, or his known agent, to the satisfaction of the Commissioners of her Majesty's Customs, it shall be lawful for the said Commissioners to grant such further time as to them shall appear necessary for the recovery of the certificate of registry, or for the registry de novo of the said ship or vessel under the provisions of this act; and thereupon the collector and comptroller shall make a memorandum in the book of registers of the further time so granted, and during such time no other bill of sale shall be entered for the transfer

of the same ship or vessel, or the same share or shares thereof, or for giving the same security thereon.

XL. And be it enacted, That if the certificate of registry of such ship or vessel shall be produced to the collector and comptroller of any port where she may then be after any such bill of sale shall have been recorded at the port to which she belongs, together with such bill of sale containing a notification of such record, signed by the collector or comptroller of such port as before directed, it shall be lawful for the collector and comptroller of such other port to endorse on such certificate of registry (being required so to do) the transfer mentioned in such bill of sale, and such collector and comptroller shall give notice thereof to the collector and comptroller of the port to which such ship or vessel belongs, who shall record the same in like manner as if they had made such endorsement themselves, but inserting the name of the port at which such endorsement was made: Provided always, that the collector and comptroller of such other port shall first give notice to the collector and comptroller of the port to which such ship or vessel belongs of such requisition made to them to endorse the certificate of registry, and the collector and comptroller of the port to which such ship or vessel belongs shall thereupon send information to the collector and comptroller of such other port whether any and what other bill or bills of sale have been recorded in the book of the registry of such ship or vessel; and the collector and comptroller of such other port having such information shall proceed in manner directed by this act in all respects to the endorsing of the certificate of registry as they would do if such port were the port to which such vessel belonged.

XLI. And be it enacted, That if it shall become necessary to register any ship or vessel de novo, and any share or shares of such ship or vessel shall have been sold since she was last registered, and the transfer of such share or shares shall not have been recorded and endorsed in manner herein-before directed, the bill of sale thereof shall be produced to the collector and comptroller of her Majesty's Customs, who are to make registry of such ship or vessel, otherwise such sale shall not be noticed in such registry de novo, except as herein-after excepted: Provided always, that upon the future production of such bill of sale, and of the existing certificate of registry, such transfer shall and may be recorded and endorsed as well after such registry de novo as before.

XLII. And be it enacted, That if upon any change of property in any ship or vessel the owner or owners shall desire to have the same registered de novo, although not required by this act, and the owner or proper number of owners shall attend at the Custom House at the port to which such ship or vessel belongs for that purpose, it shall be lawful for the collector and comptroller of her Majesty's Customs at such port to make registry de novo of such ship or vessel at the same port, and to grant a certificate thereof, the several requisites herein-before in this act mentioned and directed being first duly observed and complied with.

XLIII. And whereas great inconvenience hath arisen from the registering officers being served with subpoenas, requiring them to bring with them, and produce on trials in Courts of Law relative to the ownery of vessels or otherwise, the oaths or declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry or copies or extracts therefrom: And whereas it would tend much to the despatch of business if the attendance of such registering officers with the same upon such trials were dispensed with; be it therefore enacted, That the collector and comptroller of her Majesty's Customs at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit for his, her, or their inspection and examination any oath or declaration sworn or made by any such owner or owners, proprietor or proprietors, and also any register or entry in any book or books of registry required by this act to be made or kept relative to any ship or vessel, and shall upon every reasonable request by any person or persons whomsoever, permit him, her, or them to take a copy or copies, or an extract or extracts thereof respectively, and that the copy and copies of any such oath or declaration, register or entry, shall, upon being proved to be a true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any collector or comptroller, or other person or persons acting for them respectively, in all cases as fully and to all intents and purposes as such original or originals, if produced by any collector or collectors, comptroller or comptrollers, or other person or persons acting for them, could or might legally be admitted or received in evidence.

XLIV. And be it enacted, That if the ship or vessel, or the share or shares of any owner thereof who may be out of the kingdom, shall be sold in his absence

# *Transfers.*

Bills of sale may be produced after entry at other ports than those to which vessels belong, and transfers endorsed on certificate of registry.

Previous notice to be given to officers at the port of registry.

If upon registry de novo any bill of sale shall not have been recorded, it shall then be produced.

Upon change of property registry de novo may be granted if desired, although not required by this act.

Copies of declarations, &c., and of extracts from books of registry, admitted in evidence.

If vessels or shares sold in the absence of

*Transfers.*

owners, without formal powers, Commissioners may permit record of such sales or registry de novo, as the case may require; and also in other cases where bills of sale cannot be produced; security being given to produce legal powers, or abide future claims.

Transfer by way of mortgage.

Mortgagee not to be deemed an owner.

Transfers of ships for security of debts being registered, rights of mortgagee not affected by any act of bankruptcy of mortgagor, &c.

Governors of colonies, &c. may cause proceedings in suits to be stayed.

by his known agent or correspondent under his directions, either expressed or implied, and acting for his interest in that behalf, and such agent or correspondent who shall have executed a bill of sale to the purchaser of the whole of such ship or vessel, or of any share or shares thereof, shall not have received a legal power to execute the same, it shall be lawful for the Commissioners of her Majesty's Customs, upon application made to them, and proof to their satisfaction of the fair dealings of the parties, to permit such transfer to be registered, if registry de novo be necessary, or to be recorded and endorsed, as the case may be, in manner directed by this act, as if such legal power had been produced; and also if it shall happen that any bill of sale cannot be produced, or if, by reason of distance of time or the absence or death of parties concerned, it cannot be proved that a bill of sale for any share or shares in any ship or vessel had been executed, and registry de novo of such ship or vessel shall have become necessary, it shall be lawful for the Commissioners of her Majesty's Customs, upon proof to their satisfaction of the fair dealings of the parties, to permit such ship or vessel to be registered de novo, in like manner as if a bill of sale for the transfer of such share or shares had been produced: Provided always, that in any of the cases herein mentioned good and sufficient security shall be given to produce a legal power or bill of sale within a reasonable time, or to abide the future claims of the absent owner, his heirs and successors, as the case may be, and, at the future request of the party whose property has been so transferred without the production of a bill of sale from him or from his lawful attorney, such bond shall be available for the protection of his interest, in addition to any powers or rights which he may have in law or equity against the ship or vessel, or against the parties concerned, until he shall have received full indemnity for any loss or injury sustained by him.

XLV. And be it enacted, That when any transfer of any ship or vessel, or of any share or shares thereof, shall be made only as a security for the payment of a debt or debts, either by way of mortgage or of assignment to a trustee or trustees for the purpose of selling the same for the payment of any debt or debts, then and in every such case the collector and comptroller of the port where the ship or vessel is registered shall, in the entry in the book of registry, and also in the endorsement on the certificate of registry in manner herein-before directed, state and express that such transfer was made only as a security for the payment of a debt or debts, or by way of mortgage, or to that effect; and the person or persons to whom such transfer shall be made, or any other person or persons claiming under him or them as a mortgagee or mortgagees, or a trustee or trustees only, shall not by reason thereof be deemed to be the owner or owners of such ship or vessel, share or shares thereof, nor shall the person or persons making such transfer be deemed by reason thereof to have ceased to be an owner or owners of such ship or vessel, any more than if no such transfer had been made, except so far as may be necessary for the purpose of rendering the ship or vessel, share or shares, so transferred, available, by sale or otherwise, for the payment of the debt or debts for securing the payment of which such transfer shall have been made.

XLVI. And be it enacted, That when any transfer of any ship or vessel, or of any share or shares thereof, shall have been made as a security for the payment of any debt or debts, either by way of mortgage or of assignment as aforesaid, and such transfer shall have been duly registered according to the provisions of this act, the right or interest of the mortgagee or other assignee as aforesaid shall not be in any manner affected by any act or acts of bankruptcy committed by such mortgagor or assignor, mortgagors or assignors, after the time when such mortgage or assignment shall have been so registered as aforesaid, notwithstanding such mortgagor or assignor, mortgagors or assignors, at the time he or they shall so become bankrupt as aforesaid, shall have in his, her, or their possession, order, and disposition, and shall be the reputed owner or owners of the said ship or vessel, or the share or shares thereof so by him or them mortgaged or assigned as aforesaid, but such mortgage or assignment shall take place of and be preferred to any right, claim, or interest which may belong to the assignee or assignees of such bankrupt or bankrupts in such ship or vessel, share or shares thereof, any law or statute to the contrary thereof notwithstanding.

XLVII. And be it enacted, That it shall and may be lawful for any governor, lieutenant-governor, or commander-in-chief of any of her Majesty's colonies, plantations, islands, or territories, and they are hereby respectively authorized and required, if any suit, information, libel, or other prosecution or proceeding of any nature or kind whatever shall have been commenced or shall hereafter be commenced in any court whatever in any of the said colonies, plantations, islands, or territories respectively touching the force and effect of any register granted to

any ship or vessel, upon a representation made to any such governor, lieutenant-governor, or commander-in-chief, to cause all proceedings thereon to be stayed, if he shall see just cause so to do, until her Majesty's pleasure shall be known and certified to him by her Majesty, by and with the advice of her Majesty's Privy Council; and such governor, lieutenant-governor, or commander-in-chief is hereby required to transmit to one of her Majesty's principal secretaries of state, to be laid before her Majesty in Council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be stayed, and such documents (properly verified) as he may judge necessary, for the information of her Majesty.

XLVIII. And be it enacted, That if any person or persons shall falsely make declaration to any of the matters herein-before required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter, or falsify any certificate or other instrument in writing required or directed to be obtained, granted, or produced by this act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, or falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence forfeit the sum of five hundred pounds.

XLIX. And be it enacted, That the person or persons registered as owner or owners of any British ship or vessel which shall have been lost or taken by the enemy, or burnt or broken up, or otherwise prevented from returning to the port to which such ship or vessel belongs, or which shall on any account have lost or forfeited the privileges of a British ship, shall, immediately upon obtaining knowledge of any of the circumstances aforesaid, give notice in writing of such circumstances to the collector or comptroller of the Customs at the port of registry of such ship or vessel.

L. And be it enacted, That in all cases where any British-registered ship or vessel shall have been absent from the port of registry for the space of three years, the person or persons registered as the owner or owners of such ship or vessel shall in like manner give notice in writing to the collector or comptroller of the Customs at such port, stating therein the cause of such absence, and that the said vessel has not forfeited her privileges as a British ship.

LI. And be it enacted, That every such owner or owners failing to give such notice in either of the cases aforesaid, or making any untrue statement in respect of any such ship or vessel, shall forfeit the sum of five pounds.

LII. And be it enacted, that all the penalties and forfeitures inflicted and incurred by this act shall and may be sued for, prosecuted, recovered, and disposed of in such manner, and by such ways, means, and methods, as any penalties or forfeitures inflicted or which may be incurred for any offences committed against any law relating to the Customs may now legally be sued for, prosecuted, recovered, and disposed of; and that the officer or officers concerned in seizures or prosecutions under this act shall be entitled to and receive the same share of the produce arising from such seizures as in the case of seizures for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty for any offence against this act as any officer or officers is or are now by any law or regulation entitled to upon prosecutions for pecuniary penalties.

Penalty for making false declaration or falsifying any document.

Owners of British vessels to give notice to collectors of Customs at the port of registry of the loss, &c. of such vessels.

Or if vessels absent from the port of registry for three years to state the cause.

Failing to give such notices, &c., to forfeit 5*l*.

How penalties are to be recovered;

and officers shares.

## No. XV.

53 Geo. 3. c. 159. (21st July, 1813.)

### *An Act to limit the Responsibility of Shipowners in certain Cases.*

WHEREAS it is of the utmost consequence and importance to promote the increase of the number of ships and vessels belonging to the United Kingdom, registered according to law, and to prevent any discouragement to merchants and others from being interested therein: and whereas it is expedient to amend an act made in the seventh year of the reign of his late Majesty King George the Second, intituled "An Act to settle how far Owners of Ships shall be answerable for the

7 G. 2. c. 15.

26 G. 3. c. 86.

Owners of ships shall not be liable to make good any damage occasioned without their fault, further than the value of their vessels.

Value of the carriage of goods, &c. to be considered as freight.

Providing for separate losses.

Act not to take away responsibility of master or mariners of such ships.

Act not to extend to owners of lighters, &c.

Actions may be brought for damage by persons suffering loss though others have sustained loss by the same accident.

Proceedings in case the value of the ship, &c., is not sufficient to

Acts of the Masters or Mariners;" and also another act made in the twenty-sixth year of the reign of his present Majesty, intituled "An Act to explain and amend an Act made in the Seventh Year of his late Majesty's Reign, intituled 'An Act to settle how far Owners of Ships shall be answerable for the Acts of Masters or Mariners,' and for giving a further relief to the Owners of Ships;" and that other provisions should be made in respect thereof; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no person or persons who is, are, or shall be owner or owners, or part-owner or owners of any ship or vessel, shall be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act, neglect, matter, or thing done, omitted, or occasioned, without the fault or privity of such owner or owners, which may happen to any goods, wares, merchandise, or other things laden or put on board the same ship or vessel, after the first day of September, one thousand eight hundred and thirteen, or which after the said first day of September, one thousand eight hundred and thirteen, may happen to any other ship or vessel, or to any goods, wares, merchandise, or other things, being in or on board of any other ship or vessel, further than the value of his or their ship or vessel, and the freight due or to grow due for and during the voyage which may be in prosecution or contracted for at the time of the happening of such loss or damage.

II. And be it further enacted, That the value of the carriage of any goods, wares, or merchandise, belonging to the owner or any of the owners of such ship or vessel, and also the hire due or to grow due under or by virtue of any contract whether made by or on the behalf of his Majesty, or by or on the behalf of any other person or persons, or any body politic or corporate whatsoever, except only such hire as in the case of a ship or vessel hired for time may not begin to be earned until the expiration of six calendar months after the happening of such loss or damage, shall be deemed and taken to be, and shall be considered as freight, within the intent and meaning and for the purposes of this act, and also of the said acts of parliament made in the seventh year of the reign of his late Majesty King George the Second, and in the twenty-sixth year of the reign of his present Majesty.

III. And be it further enacted, That in case any such loss or damage shall arise or happen by more than one separate and distinct accident, act, neglect, or default, or on more than one occasion in the course or progress of a voyage, or after the end of any voyage, and before the commencement of another voyage, each and every such loss or damage shall be paid, compensated, and satisfied according to the provisions of this act, in such and the same way, and to the same extent, as if no other loss or damage had happened or arisen during the same voyage, or after the end of any voyage, and before the commencement of another voyage.

IV. Provided always, and be it further enacted, That nothing herein contained shall lessen or take away any responsibility to which any master or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of his ship or vessel.

V. Provided, also, and be it further enacted, That nothing herein contained shall extend or be construed to extend to the owner or owners of any lighter, barge, boat, or vessel, of any burthen or description whatsoever, used solely in rivers or inland navigation, or any ship or vessel not duly registered according to law.

VI. Provided also, and be it further enacted, That nothing in this act contained shall extend to prevent any action or suit being brought or instituted, or proceeded in, in any court of competent jurisdiction, by any person or persons who shall have suffered any loss or damage within the intent and meaning of this act, against any owner or part owner of any ship or vessel, notwithstanding any other person or persons may have suffered any loss or damage by the same accident, act, neglect, or default, or on the same occasion; but that all such actions and suits shall and may be brought or instituted, and proceeded in, in such manner as the same might have been brought or instituted, or been proceeded in, if this act had not been made; subject nevertheless to such order as any court may think fit to make, to restrain proceedings in such action or suit, on special circumstances, as justice and equity shall require.

VII. And be it further enacted, That if several persons shall suffer any loss or damage in or to their goods, wares, merchandizes, ships, or otherwise, by any means for which the responsibility of any owner or owners is limited by this act as aforesaid, and the value of the ship or vessel, with all her appurtenances, and

the amount of the freight estimated as herein is mentioned, shall not be sufficient to make full compensation to all and every the person and persons suffering such loss and damages, it shall and may be lawful to and for the person or persons liable to make satisfaction for such loss or damage, or any one or more of them, on behalf of himself, herself, or themselves, and the other owner or owners of the same ship or vessel, to exhibit a bill in any court of equity having competent jurisdiction, against all the persons who shall have brought any such action or actions, suit or suits as aforesaid, and all other persons who shall claim to be entitled to any recompense for any loss or damage arising or happening by the same separate and distinct accident, act, neglect, or default, or on the same occasion to ascertain the amount of the value of the ship or vessel, appurtenances and freight, and for payment or distribution thereof rateably amongst the several persons claiming recompense as aforesaid, in proportion to the amount of the several losses or damages sustained by such persons so claiming such recompense as aforesaid, according to the rules of equity, and as the case may require: Provided always, that the plaintiff or plaintiffs in such bill shall annex to such bill an affidavit that he, she, or they do not directly or indirectly collude with any of the defendants thereto, or with any other owner or owners of the same ship or vessel, or with any other person or persons, but that such bill is filed for the purposes only of justice, and to obtain the benefit of the provisions of this act; and that the several persons named as defendants to the said bill are, as the person or persons making such affidavit verily believes, all the persons claiming to be entitled to recompense for loss or damage sustained by the same accident, act, neglect, or default, or on the same occasion; and that all such defendants do claim such recompense, and to be entitled to proportions of the value of such ship or vessel, appurtenances and freight; and that no other person claims to be entitled to any proportion thereof under the provisions of this act, and that the amount of the value of such ship or vessel, appurtenances and freight, does not exceed a sum to be specified in such affidavit, and that the several claims made by the defendants to such bill do exceed the amount of the value of such ship or vessel, appurtenances and freight; and the plaintiff or plaintiffs in such bill shall, on filing such bill, apply to the Court and obtain an order for liberty to pay into Court the account of the value of such ship or vessel, appurtenances and freight, as ascertained by such affidavit, and shall pay the same into Court according to such order; and no defendant or defendants to such bill shall be compellable to put in any answer thereto until such value shall have been paid into Court as aforesaid, unless the Court shall for any special cause think fit to order security to be given for the same, in such manner as the said Court shall think fit, either instead of payment thereof into Court as aforesaid, or until such Court shall make other order to the contrary; and unless such money shall be paid into Court as aforesaid, or the said Court shall make such order for security as aforesaid, and such security shall be given according to the said order within one month after such bill shall have been filed, such bill shall immediately after the expiration of such month stand dismissed without any motion for that purpose; and the Court shall thereupon order the payment of the costs of the said suit to all the defendants who shall then have appeared to such bill; and in case such security shall be given as aforesaid, and such value shall afterwards be ordered to be paid into Court, and the same shall not be so paid within the time to be limited by the Court, such bill shall also stand dismissed without motion for that purpose, and the said Court shall also order costs to be paid to the defendants as aforesaid; and in case any such bill shall at any time be dismissed after any such value shall have been paid into Court, or such security given as aforesaid, such Court shall direct the money so paid into Court, if any, to be paid to the several claimants, defendants to such bill, who shall appear to the Court to be entitled to proportions thereof, in such manner as to such Court shall appear to be just, and shall order any security so to be given as aforesaid to be put in suit, and the money to be recovered thereupon to be paid into Court and distributed in like manner; and such payments shall be without prejudice to any action or suit which may be brought or instituted by any other person or persons, not party or parties to such bill, for any such loss or damage as aforesaid, although such loss or damage shall have arisen or happened by the same accident, act, neglect, or default, or on the same occasion as the losses or damages for which recompense shall be claimed by the parties defendants to such bill, and all such payments as shall be made under the order of the said Court shall be without prejudice to the recovery of the costs in any action or suit which shall have been brought by any such defendant or defendants, unless such costs shall be otherwise provided for by the said Court.

make compensation for damages.

If the true amount of the value of the vessel, &c. be not paid, the Court shall require further payment, &c.

In abatement of suits how costs to be paid.

Court to take measures for ascertaining the value of vessels, &c.

Costs to be taxed.

No new bills to be filed but under certain circumstances.

Interest of money paid into Court to belong to the parties entitled to the principal.

Any bill filed by one part-owner, to be equally binding on the others.

VIII. Provided always, and be it further enacted, That if it shall appear to the Court in which any such bill shall be filed as aforesaid, that the money paid into Court, or for which such security shall be given as aforesaid, is not the true amount of the value of such ship or vessel, appurtenances and freight, the said Court shall order such further sum of money to be paid into Court, or such further security to be given as to the said Court shall seem proper; and the said Court shall also at any time, if the said Court shall see fit, order security to be given for the costs of such suit as to the said Court shall seem necessary and just; and if such further sum of money shall not be paid, or such further or other security shall not be given as aforesaid within the time to be limited by the said Court for that purpose, such bill shall stand dismissed without any order for that purpose; and the said Court shall thereupon order the payment of the costs of such suit to the several defendants by the plaintiffs, and give the proper directions for the application of any money paid into Court, or due on any security given in such suit to answer the demands of the several defendants in such suit, as to such Court shall appear to be just.

IX. And be it further enacted, That if after any such suit shall have been instituted the same shall become abated or imperfect in the whole or in part, and the same shall not be revived or made perfect within the time to be limited by the Court for that purpose, such suit and all proceedings therein shall stand dismissed without any motion for that purpose; and the said Court shall order the costs of such suit to be paid to the defendants thereto, or to the representatives of any who shall be then dead; and if the plaintiff or plaintiffs in any such suit, or any of them, shall be then dead, such costs as shall not be otherwise paid shall be a charge on the assets of such deceased plaintiff or plaintiffs, and shall be recoverable as a debt by simple contract.

X. And be it further enacted, That the Court in which any such bill shall be filed as aforesaid, shall be and is hereby authorized and empowered to take all such measures as to such Court shall seem just for ascertaining the value of the ship or vessel, appurtenances, and freight, the amount of the losses or damages claimed by the defendants thereto respectively, and all such matters and things as shall be necessary for the purposes of justice in such suit, and for payment and distribution of the value of such ship or vessel, appurtenances, and freight, amongst the several persons entitled thereto, and generally to do therein as shall appear to be just; and the costs of all such proceedings shall be paid by the plaintiff or plaintiffs in such suit, unless such Court shall think fit otherwise to order.

XI. And be it further enacted, That all costs to be paid by the plaintiff or plaintiffs in any such suit in a court of equity as aforesaid shall be taxed and settled as between attorney and client, if the Court shall think fit so to order.

XII. Provided also, and be it further enacted, That if any such bill shall be filed, and shall afterwards be dismissed by reason of any such default of the plaintiff or plaintiffs therein as herein-before provided, or under any order of the said Court for that purpose, no new bill shall be filed by the same plaintiff or plaintiffs, or his, her, or their representatives, or by any other part owner or part owners of the same ship or vessel, unless the Court in which such bill shall have been filed shall order such dismissal to be without prejudice to the filing of a new bill, either absolutely or under such conditions as to the said Court shall seem just.

XIII. And be it further enacted, That if any money shall be paid into any such Court of Equity as aforesaid, in respect of the value of any such ship or vessel, appurtenances, or freight, all interest and profit made thereof whilst such money shall remain in Court shall be considered as belonging to the parties in such suit, who shall appear to be entitled to the principal money or proportions thereof respectively, and shall be divided and distributed accordingly; and if security shall be given for such value, or any part thereof, the same shall bear interest, and such interest shall be applied in like manner.

XIV. And be it further enacted, That if any such bill shall be filed as aforesaid by any part owner or part owners of any ship or vessel, on behalf of himself, herself, or themselves, and the other part owners, such bill shall bind all such other part owners, and their representatives, in the same manner as they would have been bound if parties plaintiffs to such bill; and if after the filing of any such bill any of the plaintiffs or other part owners shall die, the right of action against such part owners so dying, founded on any tort or wrong, shall not thereby be lost, but it shall be lawful to proceed against the respective representatives of the part owners so dying, in the same manner as might have been if such right of action had been founded on contract.



XV. And be it further enacted, That if any suit for any such loss or damage as aforesaid shall be instituted or depending in any court competent to act as a court of equity for the purposes of this act, such court shall, and is hereby authorized and empowered to proceed in such suit for such purposes, in the same manner, and under the same regulations, and with the same powers as are herein given to courts of equity, so far as the same are applicable to the nature of such court, and the forms of proceedings therein, and such court shall use all such means as a court of equity is by this act empowered to use for the purposes of this act.

Any Court competent to act as Court of Equity, to be deemed such for purposes of act.

XVI. And be it further enacted, That all and every sum and sums of money which shall be paid for or towards or on account of any loss or damage, in respect whereof the responsibility of the owners of any ship or vessel is limited by this act, or by the said acts or either of them, or any costs incurred in relation thereto, shall and may be brought into account among the part owners of the same ship or vessel in such and the like manner as money disbursed for the use thereof.

Money paid for damage how to be accounted for.

XVII. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without the same being specially pleaded.

Public act.

# No. XVI.

6 Geo. 4. c. 125.\* (5th July, 1825.)

*An Act for the Amendment of the Law respecting Pilots and Pilotage; and also for the better Preservation of Floating Lights, Buoys, and Beacons.*

WHEREAS ships and vessels have frequently been wrecked, and many lives and much property have been lost, from the ignorance or misconduct of persons taking charge of such ships and vessels as pilots: And whereas the master, wardens, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity, and of Saint Clement, in the parish of Deptford Strond, in the county of Kent, commonly called "The Corporation of Trinity House of Deptford Strond," have, as well by usage for more than three centuries, as by grants from the Crown, been empowered to appoint pilots, loadsmen, or guides to conduct ships and vessels into and out of and upon the river of Thames, through the North Channel, to or by Orfordness, and round the Long Sand Head, or through the Queen's Channel, the South Channel, or other channels, into the Downs, and from and by Orfordness and up the North Channel, and up the rivers Thames and Medway, and the several creeks and channels belonging or running into the same, and to make such orders and constitutions as should be needful for the wholesome government of seafaring men, and maintenance and increase of navigation, and of all seafaring men within the said river of Thames; in pursuance of which powers the said corporation have from time to time appointed a sufficient number of pilots for the purposes before mentioned, and made orders for the better regulation and government of the same: And whereas there hath been time out of mind, and now is, a society or fellowship of pilots of the Trinity House of Dover, Deal, and the Isle of Thanet, who have had the pilotage and loadmanage of all ships from the said places up the rivers Thames and Medway, which said society or fellowship have been confirmed by various acts of parliament for regulating the pilots of the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port Pilots: And whereas by certain acts of parliament, and more particularly by an act passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the more effectual Regulation of Pilots, and of the Pilotage of Ships and Vessels on the Coast of England," certain additional powers and authorities were vested as well in the said corporation of Trinity House of Deptford Strond, and the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port pilots, as also in the corpora-

52 G. S. c. 39.

\* Amended by 9 Geo. 4. c. 86. and 3 & 4 Viet. c. 68. See pp. 581 & 587.

55 G. 3. c. 87.

52 G. 3. c. 39.  
55 G. 3. c. 87.  
and all provisions in other acts relating to pilots and pilotage repealed ;

but not as to rates and penalties due or incurred, or acts done, before the operation of the provisions of this act.

The Corporation of Trinity House of Deptford Strond to license pilots to act within certain limits.

Pilots heretofore appointed may act until the 31st January next.

No person shall be licensed by the Corporation, except as herein specified, nor take charge of a ship drawing more than 14 feet water, until he shall have acted three years, and have been then re-examined and again approved.

tion of the Trinity House of the ports of Hull and Newcastle respectively : And whereas a certain other act of parliament was passed in the fifty-fifth year of the reign of his said late Majesty King George the Third, intituled " An Act to relieve certain Foreign Vessels resorting to the Port of London in respect of Pilotage, and to regulate the Mode of Payment of Pilotage on Foreign Vessels in the said Port : " And whereas the provisions of the said acts have been found inadequate and insufficient, and it is therefore expedient that the same should be repealed (except as herein-after provided), and that the several provisions therein contained respecting pilots and pilotage should be improved and amended, and consolidated in one law : May it therefore please your Majesty that it may be enacted ; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the said act passed in the fifty-second year of the reign of his late Majesty, and also the said act passed in the fifty-fifth year of the reign of his said late Majesty, and all and every the clauses, provisions, powers, penalties, forfeitures, matters, and things relating as well to pilots appointed by the said corporation of Trinity House of Deptford Strond, as to pilots of the fellowship of Dover, Deal, and the Isle of Thanet, and to the pilotage by and regulation of all such pilots as aforesaid, and also as to the conduct of all persons in matters of pilotage, within the jurisdiction of the said corporation of Trinity House of Deptford Strond and the liberty of the Cinque Ports, which are contained in any act or acts of parliament heretofore made, shall be and the same are hereby repealed : Provided always, that nothing in this act contained shall extend or be construed to extend to repeal so much of the said acts passed in the fifty-second and fifty-fifth years of the reign of his late Majesty, or either of them, as relates to any rates of pilotage due or to become due, or to any penalty or forfeiture incurred or to be incurred, or any other act, matter, or thing done or to be done, before the commencement of the operation of the provisions of this act, in relation to any such matters and things as last aforesaid.

II. And be it further enacted, That from and after the passing of this act it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby required, after due examination, to appoint and license, under their common seal, fit and competent persons duly skilled to act as pilots for the purpose of conducting all ships and vessels sailing, navigating, and passing as well up and down or upon the rivers of Thames and Medway, and all and every the several channels, creeks, and docks thereof or therein, or leading or adjoining thereto, between Orfordness and London Bridge, as also from London Bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and in the English Channel from the Isle of Wight up to London Bridge ; and all ships and vessels sailing, navigating, and passing as aforesaid (save and except as herein-after provided) shall be conducted and piloted, within the limits aforesaid, by such pilots so to be appointed and licensed, and by no other pilots or persons whomsoever : Provided always, that it shall be lawful for all pilots heretofore licensed by the said corporation of Trinity House of Deptford Strond, until the thirty-first day of January next after the passing of this act, and whilst their licences shall respectively continue in force, but no longer, to pilot or conduct any ships or vessels within such limits as such pilots might lawfully have conducted and piloted the same immediately before the passing of this act ; and the licenses so heretofore granted to such pilots respectively as aforesaid shall, unless revoked or suspended as herein-after mentioned, continue in force, notwithstanding this act, until the said thirty-first day of January, so that such pilots respectively do in all things conform themselves to the provisions of this act, and the bye-laws, rules, orders, and regulations herein-after directed to remain in force or to be established under the same.

III. And be it further enacted, That no person shall be licensed by the said corporation of Trinity House of Deptford Strond as a pilot who shall not have served as mate for three years on board of or who shall not have been for one year in the actual command of a square-rigged vessel of not less than eighty tons register tonnage as to licences for the North Channel upwards, and not less than one hundred and fifty tons register tonnage as to licences for the North Channel, Queen's Channel, South Channel, or other channels downwards, or who shall not have been employed in the pilotage or buoyage service of the said corporation of Trinity House for seven years, or who shall not have served an apprenticeship of five years to some pilot vessel licensed under the said act passed in the fifty-second year of the reign of his said late Majesty, or under this act ; and that no person so licensed shall take charge as a pilot of any ship or vessel drawing more

than fourteen feet water in the rivers Thames or Medway, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been after such three years, on re-examination, approved of in that behalf by the said corporation of Trinity House, on pain of forfeiting ten pounds for every such offence, as well by the person acting as such pilot, as also by the master or other person having the command of such ship or vessel who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid.

IV. And be it further enacted, That each and every pilot already licensed by the said corporation of Trinity House of Deptford Strond, or to be licensed by the said corporation under the authority of this act, (except only such pilots as have been or shall be so licensed by the said corporation upon their receiving certificates of examination by any sub-commissioners of pilotage,) as in the said act of the fifty-second year of the reign of his said late Majesty King George the Third and herein-after directed, in lieu and satisfaction of and for all the ancient and accustomed duties heretofore payable by such pilots to the said corporation, shall from time to time and at all times hereafter pay or cause to be paid to the said corporation, or to such person or persons as they shall appoint to receive the same on their behalf, the sum of three guineas in the month of January yearly; and that each and every pilot so licensed or to be licensed by the said corporation as aforesaid, as well upon receiving such certificates as aforesaid as otherwise howsoever, shall also from time to time and at all times, from and after the first day of July next, pay or cause to be paid to the said corporation, or to such person or persons and at such places and times as the said corporation shall in that behalf appoint, a certain poundage of sixpence in the pound upon all the pilotage earned by each and every of such pilots from the said first day of July inclusive, on pain of forfeiture for default of any of the payments aforesaid, or for any concealment or fraud therein or relating thereto, double the amount payable, and of being suspended or dismissed from acting as a pilot, at the discretion of the said corporation; which said payments hereby directed to be made as aforesaid shall be carried to and applied to the purposes of the pilots fund of the said corporation herein-after mentioned.

V. And be it further enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby required, to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons at such ports or places in England as they may think requisite, (except within the liberty of the Cinque Ports, and all such other ports and places within or for which particular provision shall have been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots,) not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called sub-commissioners of pilotage, and shall take the oath in the schedule hereunto annexed, marked (C.), for the faithful discharge of their duty; and such persons so to be appointed shall examine, and they are hereby authorized (so long as their respective deputations or appointments shall not be revoked or superseded by the appointment of other persons in their places) to examine into the qualification of persons to act as pilots for such respective ports and places and the adjoining coasts specified in their respective deputations or appointments as aforesaid; and it shall be lawful for the said corporation, upon their receiving a satisfactory certificate under the hands of any three of the persons so to be appointed, where the whole number at any port or place shall consist of four or five, and of any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination.

VI. Provided always, and be it further enacted, That it shall be lawful for the corporations of the Trinity Houses of the ports of Hull and Newcastle respectively to appoint sub-commissioners of pilotage to examine pilots, and give licences for them to pilot ships and vessels into or out of any ports, harbours, or places within the limits of their respective jurisdictions, any thing in this act contained to the contrary notwithstanding: Provided always, that such sub-commissioners as have been already appointed, either by the said corporation of Trinity House of Deptford Strond, or by the said corporations of the Trinity Houses of the ports of Hull and Newcastle respectively, under the authority of any act or acts of parliament heretofore passed, shall continue to act in the same manner as if they were appointed under this act.

Penalty as well by the person acting as by the person in command permitting him.

Pilots to pay annually *3l. 3s.* and *6d.* in the pound on their earnings;

to be applied to the purposes of the pilots fund.

The Corporation of Trinity House shall appoint sub-commissioners to examine pilots at the requisite ports, and on their certificate of qualification may grant licences.

The Trinity Houses of Hull and Newcastle may appoint sub-commissioners to examine pilots, &c. within their jurisdictions. Sub-commissioners already appointed shall continue to act.

Notice of appointment of pilots by the Corporation of Trinity House of Deptford Strond to be fixed up at the Trinity House, &c., after which no other pilot or person shall act.

Corporation of Trinity House shall establish rates for pilotage, performed by pilots licensed on certificates.

Of which rates, tables shall be hung up at the custom houses of the respective ports, and no greater or less rates shall be received or paid.

Majority of pilots, or any shipowner, being dissatisfied with the rates, may appeal to Privy Council.

Licences to be granted for one year, and renewable.

VII. And be it further enacted, That when and as soon as the said corporation of Trinity House of Deptford Strond shall have licensed pilots for any particular port or ports, and the respective coasts near the same as aforesaid, they shall cause notice of such licences to be published by fixing up such notice in writing at the Trinity House and at the Custom House in London, and also at the respective custom houses of the ports for which, and for the coasts near the same, such licences shall be granted, and shall also afterwards cause such notice to be published in the *London Gazette*, and in one or more of the newspapers circulated in that part of the country where the ports shall respectively be situated, which publication in the *London Gazette* shall be good and sufficient evidence of such notice having been given; and from and after a time or times to be limited in the said notice, which shall not in any case, or in relation to any ships or vessels whatever, be less than six weeks from the publication thereof as aforesaid, and shall be proportionably more at the discretion of the said corporation, in relation to ships and vessels engaged in foreign voyages at the time of such publication, all ships and vessels sailing, navigating, or passing into or out of the said respective ports, or upon the coasts thereof (save and except as herein-after mentioned), shall be conducted and piloted by such pilots only as shall be so licensed as aforesaid, and by no other pilots or persons whomsoever.

VIII. And be it further enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and required, to establish, vary, and alter from time to time, as circumstances shall render the same necessary, rates of pilotage, in relation to all pilotage performed in any river, port, or place, or upon any coast whatever, by any pilot or pilots already licensed, or who shall be licensed by the said corporation, upon their receiving certificates of examination from sub-commissioners of pilotage as aforesaid, which rates shall be regulated by and proportioned as well to the size and draught of water of the vessels, as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said corporation may think fit to take into consideration in fixing and establishing such rates; of which establishment or alteration of rates of pilotage notice shall be given, by hanging up printed tables thereof, corrected from time to time as variations therein shall be made, at the several custom houses at the ports to which the said rates shall apply; and no greater or less rates, or other reward or emolument for such pilotage, shall, under any pretence whatever, be demanded, solicited, received, paid, or offered, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting, or receiving, as by the person paying or offering such greater or less rates, reward, or emolument: Provided that ships returning by distress of weather, contrary winds, or on account of accident, into ports in the districts of the Isle of Wight, Plymouth, and Falmouth, shall be subject to pay one half of the common pilotage in the said ports.

IX. Provided always, and be it further enacted, That if the major part in number of the pilots who shall be licensed by the said corporation of Trinity House of Deptford Strond for any particular port or place, in consequence of their receiving certificates of examinations as aforesaid, shall be dissatisfied with the rates so established or altered for such port or place, or in case any owner of any ship or vessel interested in any such rates shall be dissatisfied therewith, it shall be lawful for such parties respectively to appeal to his Majesty, his heirs and successors, in his or their most honourable Privy Council, and for any committee of such Privy Council, calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter, and regulate such rates as to them shall appear to be expedient, in case the matter of such appeal shall, in the discretion of the said Privy Council, or committee thereof, appear to require the making of any order therein.

X. And be it further enacted, That all and every the licences to be granted under the authority of this act, by the said corporation of Trinity House of Deptford Strond, shall be granted in the first instance up to and until the thirty-first day of January next ensuing the date thereof, and no longer; and that the same licences, and also all and every the licences heretofore granted by the said corporation of Trinity House of Deptford Strond, and which shall be in force at the time of the passing this act, shall and may be renewed and confirmed from year to year, up to and until the thirty-first day of January in every year, and no longer, at the discretion of the said corporation, such renewal and confirmation to be by endorsement on such licences respectively, signed by the secretary to the said corporation for the time being, or by such other person or persons as shall or may be thereunto authorized by the said corporation.

XI. And be it further enacted, That all persons licensed to act as pilots, or in pilot vessels, by the said corporation of Trinity House of Deptford Strond, by virtue of this act, shall from time to time and at all times hereafter be subject to the regulations and government of the said corporation, who are hereby authorized and empowered, as well for ensuring the good conduct and constant attendance of such pilots upon their duty, as for enforcing the general purposes of this act, from time to time to make and frame all such bye-laws, rules, orders, regulations, and ordinances as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage, for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said corporation respectively to annex such reasonable penalties and forfeitures for the breach of such bye-laws, rules, orders, regulations, and ordinances, when made, as to them shall seem expedient in that behalf, and from time to time to annul, alter, and amend all or any of the existing bye-laws, rules, orders, regulations, and ordinances, and to make such other and new bye-laws, rules, orders, regulations, and ordinances as they shall think proper, so as such bye-laws, rules, orders, regulations, and ordinances be made conformable to the true intent and meaning of this act, and shall not be repugnant to the laws of this realm: Provided always, that no bye-laws, rules, orders, regulations, or ordinances hereafter to be made by the said corporation shall have force or effect before they shall have been examined, sanctioned, and approved by the Chief Justice of his Majesty's Court of King's Bench, or by the Chief Justice of his Majesty's Court of Common Pleas, the sanction and approbation of either of which Chief Justices shall be verified under his hand and seal; and all and every such bye-laws, rules, orders, regulations, and ordinances, when so made and confirmed as aforesaid, shall be observed and kept and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this act.\*

Corporation of Trinity House may make bye-laws, and annex penalties for breach of them.\*

Bye-laws to be sanctioned by the Chief Justice of the King's Bench or Common Pleas.

XII. And in order that all such bye-laws, rules, orders, regulations, and ordinances may be previously examined by the parties interested therein, be it further enacted, That copies of all such proposed bye-laws, rules, orders, regulations, and ordinances shall be transmitted to his Majesty's Privy Council, and to the Commissioners of Customs in London, three calendar months before the same shall be submitted to such Chief Justice as aforesaid; and the Commissioners of the Customs are hereby required, upon the receipt of such copy, to cause the same to be printed and hung up, as soon as the same can be done, in the several custom houses of the principal ports in Great Britain, there to be open to the inspection of all persons interested therein at all seasonable times; and notice shall be given in the *Gazette* of such proposed bye-laws being so hung up for inspection as aforesaid.

Proposed bye-laws to be previously transmitted to the Privy Council and to the Commissioners of Customs, the latter of whom shall cause printed copies to be hung up at the custom houses.

XIII. And be it further enacted, That all such bye-laws, rules, orders, regulations, and ordinances as shall be so made and confirmed as aforesaid, shall be printed, and shall be hung up in some public or conspicuous place in the several custom houses of the ports of England within the limits for which the pilots respectively shall be licensed, and also at the Trinity House in London.

Bye-laws confirmed to be hung up in the custom houses and the Trinity House.

XIV. And be it further enacted, That from and after the passing of this act it shall and may be lawful for the Lord Warden of the Cinque Ports and Constable of Dover Castle, or his lieutenant for the time being, and they are hereby required, to appoint and license fit and competent persons duly skilled as pilots for the

The Lord Warden of the Cinque Ports to license pilots to act within certain limits.†

\* Bye-laws have been made by the Trinity Board in pursuance of this section, and sanctioned by the Chief Justice of the Court of Queen's Bench. Of these the following is, in particular, important to the owners and masters of ships generally. Clause 6. It is ordained that every pilot who shall have taken charge of any ship from the river Thames to the Downs or elsewhere, shall, without any additional compensation in that behalf, wait on board for the space of three complete days while such ship may be detained at Gravesend or elsewhere, for want of seamen or by any other casualty, nor shall he at the end of three complete days be at liberty to quit such ship, or receive any additional compensation, if she shall be further detained by winds, weather, or tides; and should the ship be detained beyond three complete days on any other account except winds, weather, or tides, the pilot having the charge thereof shall nevertheless still (if required so to do) remain in the charge of her, provided a compensation of six shillings per day be offered to him in that behalf by the master or owner.

† By 9 Geo. 4. c. 86. Cinque Port pilots (except those expressly licensed as therein mentioned) are not to take charge of vessels to the westward of the public landing-place at Gravesend, or westward of Standgate Creek.

Existing licences to continue in force.

No person shall take charge of any ship as a Cinque Port pilot till he has been examined and admitted.

Penalty.

Nor of ships drawing more than 11 feet 6 inches until he shall have been licensed and have acted three years; 14 feet, five years; and 17 feet, seven years.

Master and wardens of the fellowship appointed to examine pilots shall take the oath in schedule marked (B.)

A number of Cinque Port pilots shall constantly ply at sea to take charge of ships coming from the westward; and upon signals of fleets, all pilots shall prepare to go off.

purpose of conducting all ships and vessels, sailing, navigating, and passing from or by Dungeness, up the rivers Thames and Medway to London Bridge and Rochester Bridge, and all and every the several channels, creeks, and docks of the same, and from the south buoy of the Brake to the westward, as far as the west end of the Owers; and all ships and vessels sailing, navigating, and passing as aforesaid (save and except as herein-after provided) shall be conducted and piloted within the limits aforesaid, by such pilots so appointed and licensed, and by no other pilots or persons whomsoever: Provided always, that it shall be lawful, after the passing this act, for any pilot or pilots heretofore licensed by the said Lord Warden and Constable for the time being, or his lieutenant for the time being, to pilot or conduct any ship or vessel within such limits as such pilot or pilots might lawfully have conducted and piloted the same immediately before the passing of this act; and the licences so heretofore granted to such pilots as aforesaid shall continue in force notwithstanding this act, so that such pilots do in all things conform themselves to the provisions of this act, and the rules and regulations herein-after directed to remain in force or be established under the same.

XV. And be it further enacted, That no person shall, from and after the passing of this act, take charge of any ship or vessel as a pilot belonging to the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called the Cinque Port pilots, before he shall be examined by the master and two wardens or by four wardens of the said society or fellowship for the time being touching his abilities, and shall be approved and admitted into the society or fellowship of the Trinity House of Dover, Deal, and the Isle of Thanet, by the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being; and if any person shall presume to act as a pilot belonging to the said society or fellowship, without having been so examined, approved, and admitted as aforesaid, every such person shall for the first offence forfeit ten pounds, for the second twenty pounds, and for every other offence forty pounds.

XVI. And be it further enacted, That no person belonging to the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port pilots, shall from and after the passing of this act be allowed to take charge as a pilot of any ship or vessel drawing more than eleven feet six inches water, until he shall have been licensed and acted as a pilot for three years; or of any ship or vessel drawing more than fourteen feet water, until he shall have been licensed and acted as a pilot for two years more, making five years; or of any ship or vessel drawing more than seventeen feet water, until he shall have been licensed and acted as a pilot two years more, making seven years in the whole; and at the expiration of such period of seven years, such pilot shall be again examined as to his fitness and competency, and if he shall be approved of, and licensed on such examination, shall be authorized and allowed and entitled to take charge of any ships or vessels of any draught of water.

XVII. And be it further enacted, That the master, and such wardens of the said society or fellowship of pilots of the Trinity House of Dover, Deal, and the Isle of Thanet, as shall be appointed from time to time to examine into the skill and ability of any person on his being first admitted as a pilot into the said society or fellowship, or after he shall have been licensed and served for seven years, shall take the oath marked (B.) in the schedule hereunto annexed, to be administered unto him or them respectively by the registrar of the Court of Loadmanage, who is hereby authorized to administer such oath.

XVIII. And be it further enacted, That a proper and sufficient number of pilots of the Cinque Ports, not less than eighteen at any one time, and in succession from time to time, without intermission or any unnecessary delay, shall at all seasonable times, by day and night, constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships and vessels coming from the westward; and such pilots shall not allow any ship or vessel, having a signal for a pilot flying, to pass without attempting to board her; and that upon proper signals being made at and from signal houses now erected, or which may be erected on commanding situations near to Dover for that purpose, giving notice of the approach of any fleet of ships or vessels coming from the westward, all Cinque Port pilots not on duty at the time shall, according to such rules and regulations as to number, rotation, or otherwise, as have been or shall be made in that behalf, forthwith prepare to go afloat, and shall go off in sufficient time to fall in with such ships and vessels, on pain of forfeiting, in case of neglect herein, for the first offence the sum of twenty pounds, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third

offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter as a pilot.

XIX. And be it further enacted, That the master or other person having the command of any ship or vessel, coming from the westward, and bound to any place in the rivers of Thames or Medway, not having a duly qualified Cinque Port pilot on board, shall, on the arrival of such ship or vessel off Dungeness, and until she shall have passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or have been at anchor for one hour, as herein-after mentioned, display and keep flying the usual signal for a pilot to come on board; and if any duly qualified Cinque Port pilot shall be within hail or approaching and within half a mile, with the proper distinguishing flag flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time or shortening sail, or by all practicable means consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall give the charge of piloting his ship or vessel to such Cinque Port pilot; and every person commanding any such ship or vessel, who shall not display and keep flying the usual signal for a pilot to come on board, from the time such ship or vessel shall have arrived off Dungeness, and until she shall have passed the south buoy of the Brake, in a line to be drawn from Sandown Castle to the said buoy, (unless in the meantime a duly qualified Cinque Port pilot shall have come on board,) or who shall within the limits aforesaid decline to take on board the first duly qualified Cinque Port pilot who shall offer, or to give charge of his ship or vessel to such duly qualified Cinque Port pilot, or who shall not heave to, shorten sail, or otherwise consistently with the safety of the ship or vessel facilitate such pilots coming on board as aforesaid, shall forfeit and pay double the amount of the sum which would have been demanded for the pilotage of such ship or vessel: Provided always, that if any ship or vessel coming from the westward, and bound to any place in the rivers Thames or Medway, shall anchor any where in the Downs between the South Foreland, and a line drawn from Sandown Castle to the south buoy of the Brake, having any licensed pilot other than a duly qualified Cinque Port pilot on board, it shall not be necessary for the master of such ship or vessel to display or keep flying the usual signal for a pilot to come on board thereof, any longer than for and during one hour next after such ship or vessel shall so have anchored as aforesaid; and it shall be lawful for any duly qualified Cinque Port pilot at any time before such ship or vessel shall have been at anchor one hour with such signal flying as aforesaid, to repair on board the same, and to take charge of her up the said rivers, but not otherwise.

XX. And whereas the pilots of the Cinque Ports are divided into two parts or classes, called the upper and lower book pilots: And whereas the permitting Cinque Port pilots of the lower book to take charge of ships which before the passing of the said act of the fifty-second year of the reign of his said late Majesty King George the Third could only be taken by pilots of the upper book has diminished and will diminish the profits of the upper book pilots, and has increased and will increase the profits of the lower book pilots, and it is therefore reasonable that compensation should be made by the lower book pilots, to the persons who were at the time of the passing of the said last-mentioned act upper book pilots; be it therefore enacted, That it shall be lawful for the Court of Loadmanage from time to time to settle the amount of the deductions to be made from the rates received by lower book pilots, for taking charge of vessels of greater draught of water than they could before the passing of the said act by law take, and in what proportions and how and in what manner and to whom the same are to be paid, and how the same shall be applied in making compensation to the persons who were upper book pilots at the time of the passing of the said act, for the losses they may sustain by such lower book pilots taking charge of such vessels as aforesaid, provided that such deductions so to be fixed as aforesaid shall from time to time be diminished and decreased as such persons who were so upper book pilots at the time of the passing of the said act shall die, be superannuated, or discontinue to act as pilots, and that such deductions shall be taken and accepted in lieu of all other allowances or contributions whatsoever from the said lower book pilots, except Trinity money, clerks fees, and for widows.

XXI. And be it further enacted, That all persons licensed or to be licensed to act as Cinque Port pilots shall from time to time and at all times hereafter be subject to the regulations and government of the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, and it shall be lawful for the master and wardens of the said society or fellowship of pilots of Dover,

Masters of ships from the westward not having a pilot shall display a signal for one, and facilitate his getting on board.

Penalty.

Ships anchoring within certain limits, not having a Cinque Port pilot, shall display a signal, and Cinque Port pilots may within an hour repair on board and take charge.

Court of Loadmanage to settle the compensation to be paid to upper book pilots by lower book pilots for being allowed to take charge of ships of greater draught.

Cinque Port pilots to be subject to the rules and regulation of the Lord Warden, &c.

Deal, and the Isle of Thanet, and the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, his lieutenant for the time being, and the deputy lieutenant for the time being, or either of them, with the assent of the Commissioners of Loadmanage, or the major part of them, present at an assembly commonly called a Court of Loadmanage, to be held by the said Lord Warden or his deputy, as and when they shall see fit, or occasion shall require, to annul, alter, or amend the rules and regulations of the said Lord Warden or Court of Loadmanage, which shall be in force at the time of the passing of this act, and which are hereby directed to remain in force notwithstanding the same, and to make from time to time such other sufficient rules and orders for enforcing the due observance of the provisions of this act by all Cinque Port pilots, and for providing for the good government, constant attendance, and regulation of all such pilots in going off to and taking charge of, and conducting and navigating his Majesty's ships and vessels, and the ships and vessels in his Majesty's employ, and also all ships and vessels whatever and wheresoever, within the proper and usual limits of such pilots, or wherein they shall for the time being act or be; and for effectually securing the performance of all the duties and services of such pilots at all times, and all alterations and amendments in such rules and regulations so in force as aforesaid, and all other rules and regulations, or alterations or amendments thereof, hereafter to be made shall, before the same are allowed to take effect, or become binding on any person or persons whatever, be printed and transmitted to the Custom House in London, and there hung up in some conspicuous place in the long room of the said Custom House; and notices shall be published in the *Gazette*, and put up at the custom houses within the Cinque Ports, of such rules and regulations, or any alterations thereof, for inspection, for one calendar month, in order that any persons interested therein, whether as owners or masters of ships, or pilots, or otherwise, may transmit to the Lord Warden of the Cinque Ports, or his lieutenant, any objections which they may have thereto, for the purpose of the same being altered or confirmed; and if no objection to the rules and regulations so made or altered shall be proposed, by or on the behalf of any person or persons, within the space of thirty days after the notices shall have been given and made public, in the manner herein-before provided, they shall have the same force and effect to all intents and purposes as all other rules and regulations for the government of pilots within the jurisdiction of the Cinque Ports have; but if an objection shall be made to the Lord Warden, or his lieutenant, by or on behalf of any person or persons, to any rule or regulation, or to any alteration in any rule or regulation, of which notice shall be given as aforesaid, within thirty days after the publication thereof, then and in such case the operation thereof shall be suspended until reference shall be had to his Majesty's most honourable Privy Council, who are hereby authorized and empowered to hear as well any person who shall be deputed by the Court of Loadmanage as by the person or persons objecting, and finally to decide as to the confirming, altering, or rejecting such rules or regulations, which decision of the Privy Council shall be final and binding on all parties; and copies of such rules or regulations shall be delivered to every member of the said society or fellowship, and also to every new member of the said society on his election; and a copy or extract thereof shall be at all times in the possession of every pilot belonging to the Cinque Ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish rates of payment out of such surplus earnings of the lower book pilots, as may arise from their being allowed to take the higher classes of ships, in the absence of pilots of the upper book, under the provisions of this act, for the better support and maintenance of the upper book pilots, and also penalties and forfeitures for the enforcing such rules and regulations, and better ordering of the said pilots, and for suspending or depriving any of the said pilots of their licences for breaking such rules or orders, or omitting to do any thing required by the same to be done, or for acting in anywise contrary to such rules or orders.

If such rules shall be defective, the Privy Council shall amend, correct, or enlarge the same.

XXII. Provided always, and be it further enacted, That if any such rules and regulations so hereafter to be made in relation to Cinque Port pilots as aforesaid shall appear to be in any material point erroneous, insufficient, or defective, it shall be lawful for the owner of any ship, or other person interested in the matter of such rules or regulations, to apply to his Majesty's most honourable Privy Council, who shall thereupon amend, correct, or enlarge the same, or cause such other proper and sufficient rules and regulations to be drawn up for the purposes aforesaid; which rules and regulations so made, or so amended, corrected, and enlarged, shall be distributed, published, and made use of in such manner as his



Majesty's said Privy Council shall in that behalf appoint and direct ; and the same shall take effect from such time as in the said rules or regulations shall be expressed in regard to the commencement thereof.

XXIII. And whereas under the provisions of an act passed in the forty-eighth year of the reign of his said late Majesty King George the Third, intituled "An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British Seas," the number of pilots of the Cinque Ports was increased to one hundred and forty, and it hath been found that the said last-mentioned number is at present, in the time of peace, more than sufficient for the trade and navigation of this kingdom ; be it therefore enacted, That until the number of such pilots shall by death or otherwise be reduced below one hundred and twenty, or shall be added to, as herein-after mentioned, it shall not be lawful for the said Lord Warden and Constable of Dover Castle, or his lieutenant for the time being, without special permission in that behalf given by his Majesty's most honourable Privy Council, upon the recommendation of the said corporation of Trinity House of Deptford Strond, to fill up any more than each alternate vacancy which shall arise in the number of such pilots : Provided always, that twenty Cinque Port pilots more, or any less number of such pilots, shall and may be added to the then existing number whenever such addition shall be directed to be made by an order of such Privy Council upon application thereto for that purpose by the said corporation of Trinity House, and in like manner from time to time, so as the number of Cinque Port pilots shall not at any one time exceed one hundred and eighty, of which said reduction or additions respectively notice shall be given by or under the authority of the Lord Warden of the Cinque Ports, in the *London Gazette*, and in one or more newspaper or newspapers circulating in the counties of Middlesex and Kent.

As to the number of Cinque Port pilots, and how and when to be increased.

XXIV. And be it further enacted, That whenever such additions to the number of the said pilots shall respectively take place, as herein-before provided, the numbers so increased shall from thenceforth be kept up from time to time, by the appointment of pilots in succession, as often as any vacancy or vacancies shall happen by death, incapacity, or dismissal : Provided always, that in time of peace no more than each alternate vacancy in the number of Cinque Port pilots shall be filled up without a special permission in that behalf given by his Majesty's Privy Council, upon the recommendation of the said Corporation of Trinity House, unless the number of such pilots shall, at the time of such filling up, be reduced below one hundred and twenty, in which case such vacancy shall and may be filled up from time to time without such permission as aforesaid.

The increased number of pilots shall be kept up.

But in peace no more than each alternate vacancy shall be filled up without permission of Privy Council, unless number below 120.

Rates in tables (A.) and (B.) of schedule (A.) may be demanded by pilots, and no greater or less.

XXV. And be it further enacted, That from and after the passing of this act the respective rates or prices herein-after enumerated in the tables marked (A. and B.) respectively in the schedule marked (A.) to this act annexed shall and may be lawfully demanded and received by any pilot licensed or to be licensed by the said corporation of Trinity House of Deptford Strond, or by the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being respectively, for the piloting or conducting of any ship or vessel from place to place, as expressed in the said tables respectively ; that is to say, the respective rates or prices enumerated in the said table marked (A.) shall and may be demanded and received by any pilot licensed or to be licensed by the said corporation ; and the respective rates or prices enumerated in the said table marked (B.) shall and may be demanded and received by any pilot licensed or to be licensed by the said Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being ; and no greater or less rates or prices or other reward or emolument shall under any pretence whatever be demanded, solicited, received, paid or offered than such rates or prices, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying or offering, such greater or less rate or price, reward, or emolument.

Penalty.

Rates may be varied by the Corporation of Trinity House and Lord Warden of the Cinque Ports respectively, with the consent of the Privy Council.

XXVI. Provided always, That it shall and may be lawful for the said corporation of Trinity House of Deptford Strond (as to the said rates or prices to be demanded and received by pilots licensed or to be licensed by the said corporation), and for the said Lord Warden of the Cinque Ports, and Constable of Dover Castle for the time being, or his lieutenant for the time being (as to the said rates or prices to be demanded and received by pilots licensed or to be licensed by the said Lord Warden and Constable, or his lieutenant), and they are hereby respectively authorized and empowered from time to time and at any time or times hereafter, with the consent of his Majesty, his heirs and successors, in his or their most honourable Privy Council, to increase, reduce, alter, or modify all

or any or either of the said respective rates or prices so enumerated in the said tables respectively, or to substitute other rates or prices in lieu thereof, and the same rates or prices so increased, reduced, altered, modified, or substituted as aforesaid again in like manner and with the like consent from time to time to increase, reduce, alter, or modify, or others to substitute in lieu thereof, and to fix and determine the period (so that the same be not less than three calendar months from the giving of the notice herein-after mentioned) from and after which such altered or substituted rates and prices are to be demanded, of which rates and prices, and of the period from and after which the same are to be demanded, notice shall from time to time be given, by hanging up printed tables thereof in some public or conspicuous place in the Custom House of London, and also at the Trinity House in London; and from and after the period specified in such last-mentioned tables the respective rates or prices therein enumerated may and shall be demanded and received by any pilot licensed by the said corporation of Trinity House, or by the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being respectively, instead of the said several rates and prices mentioned in the said tables marked (A. and B.) respectively; and from and after such period no greater or less rates or prices, or other reward or emolument, shall, under any pretence whatever, be demanded, solicited, received, paid, or offered, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying or offering, such greater or less rate or price.

**Penalty.**

Persons applying for licences shall execute a bond for securing obedience to bye-laws.

XXVII. And be it further enacted, That every person who shall apply for a licence to act as a pilot by virtue of this act shall, before any licence shall be granted to him, execute a bond in a penal sum, at the discretion of the said corporation of Trinity House of Deptford Strond, or of the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being (as the case may be), to an amount not exceeding one hundred pounds, to be paid to the said corporation, or to the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet (as the case may be), their successors or assigns, with a condition subjoined thereto for better securing the due obedience of such pilot to the bye-laws, rules, orders, regulations, and ordinances made in pursuance of any act or acts of parliament heretofore passed, or which shall be made and framed pursuant to this act, which bond shall be capable of being given in evidence in any court of law or equity, without being stamped according to the laws relating to the stamp duties: Provided always, that all bonds before given by pilots under any former act or acts of parliament shall continue in force, and be deemed to be given under this act, unless new bonds shall in any case be required by the said corporation, or by the said Lord Warden and Constable, or his lieutenant respectively, in which case new bonds shall be given accordingly.

Bonds already given to remain in force.

Bye-laws, &c. under former act to remain valid, unless altered by this act.

XXVIII. And be it further enacted, That all bye-laws, rules, orders, regulations, and ordinances made under the said recited act of the forty-eighth year of the reign of his said late Majesty, or under the said recited act of the fifty-second year of the reign of his said late Majesty, or either of them, and which shall be in force under the same respectively at the time of the passing of this act, shall remain, continue, and be in full force and virtue until the same respectively shall have been annulled or altered, or other bye-laws, rules, orders, regulations, or ordinances made in lieu thereof under this act, and shall be and are hereby declared to be good and valid bye-laws, rules, orders, regulations, and ordinances under this act, as fully as if they had been made under the authority of the same; any thing herein-before, or in any other act of parliament, to the contrary notwithstanding.

Licences may be revoked, annulled, or suspended.

XXIX. Provided always, and be it further enacted, That as well every such licence so granted or to be granted, renewed, or confirmed by the said corporation of Trinity House of Deptford Strond as aforesaid, as also every such licence so granted or to be granted by the said Lord Warden of the Cinque Ports and Constable of Dover Castle, or his lieutenant for the time being as aforesaid, shall and may be by the said corporation, or by the said Lord Warden and Constable of Dover Castle, or his lieutenant for the time being respectively, annulled, suspended, or adjudged to be forfeited in such manner and at any such time or times as to them the said corporation and Lord Warden, or his lieutenant for the time being respectively, shall seem meet, as well during as at the end of the period for which such licences respectively shall have been so granted, renewed, or confirmed as aforesaid.

XXX. Provided always, and be it further enacted, That every pilot whose licence shall be revoked, annulled, suspended, or adjudged to be forfeited, or who shall be suspended from acting as a pilot, as herein-before or herein-after mentioned, shall and may, at any time within six months next after such revocation, annulling, suspension, or adjudication shall have been made, and upon giving notice to the corporation or other authority by which such licence shall have been so revoked, annulled, or suspended, or such adjudication made as aforesaid, and every person who, having complained of any such pilot, shall be dissatisfied with the adjudication made upon the matter of such complaint by the corporation or other authority which shall have cognisance thereof, shall and may, at any time within six months next after such adjudication, and upon giving notice to the corporation or other authority by which such adjudication was made, appeal to his Majesty's most honourable Privy Council, who shall thereupon hear the appeal, and confirm or annul any determination or adjudication in the premises, or at their discretion make any particular and special order relating thereto, and to the matter of such appeal, and the costs thereof, as the case may require.

XXXI. And be it further enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and for the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, and also for all other corporate bodies or persons having lawful authority to appoint pilots within the limits of their respective jurisdictions, to license vessels of such size and description as shall appear to them to be proper, for the purpose of having pilots constantly in attendance in such vessels at sea, and to nominate and appoint and from time to time to remove and again appoint the masters of such vessels respectively; and for the better support of such pilot vessels, it shall be lawful for any number of pilots licensed by virtue of this act, or otherwise lawfully licensed, with the consent of the said corporate bodies or persons by whom respectively such pilots have been or shall be appointed as aforesaid, to constitute a joint-stock company or companies for the providing and maintaining of such pilot vessels, which companies and the said vessels shall at all times be subject to such rules and regulations as shall from time to time be sanctioned and approved in that behalf by the corporate bodies or persons by whom respectively such pilots shall respectively have been licensed.

XXXII.\* And be it further enacted, *That every pilot boat or vessel, or other boat or vessel, in the pilot service of any corporation or society established by law, in relation to pilotage, or of or belonging to any person authorized to act as a pilot by such corporation or society, shall at all times and on every station be fitted with black sides, and have the upper streak next the gunwale painted white, and shall while afloat carry a flag at the mast-head, or on a sprit or staff, or in some other equally conspicuous situation, which flag shall be of large dimensions, proportioned to the size of the boat or vessel carrying the same, and shall be half red and half white, in horizontal stripes, of which the uppermost shall be white, and the same shall at all times be kept and preserved in a clean and distinct condition, so as to be easily discerned at a proper and sufficient distance; and every such boat or vessel shall also have the name of the principal pilot thereof for the time being painted in broad white letters, of three inches in length, on a black ground, on her stern, and on each bow such number as shall be expressed in the licence of such principal pilot, which name and number shall not be hid or concealed by any person at any time, on pain of forfeiting, for the omission or evasion of any of the provisions herein-before made in respect of such pilot boat or vessel, the sum of twenty pounds, to be paid by the senior pilot on board, who is hereby declared answerable for the due observance of the matters aforesaid, by every person on board such boat or vessel; and in case any pilot shall be carried off in any boat not in the service of any such corporation or society, such pilot shall exhibit a similar flag at the mast-head, or on a sprit or staff, to distinguish that such boat has a pilot on board, on pain of such pilot so carried off forfeiting the sum of twenty pounds, unless he shall show reasonable cause for having omitted to exhibit such flag.*

XXXIII. And be it further enacted, that if any boat or vessel, not having a licensed pilot on board, shall without lawful authority carry such distinguishing flag as aforesaid, the owner or owners, or the master or other person having

Pilots so suspended, &c. and persons complaining against them, may appeal to the Privy Council.

Vessels to be licensed for having pilots in attendance at sea, &c.

How pilot boats are to be distinguished.

Penalty.

Pilot carried off in any other boat to display a flag.

Penalty for carrying distinguishing flag without

\* The words in *italics* in the above section are repealed by 3 & 4 Vict. c. 68. s. 2., which directs in lieu thereof that "every such boat or vessel shall be painted or tarred entirely black, except the name or other description now required by law to be painted on such boat or vessel."

having a pilot on board.

Boat running before a vessel, not having a pilot, and which cannot be boarded, entitled to pilotage.

Name, &c. of pilots appointed to be transmitted to the Trinity House, and a list of all pilots annually to the Trinity House and Custom House.

Commissioners of Customs to transmit to their principal officers at ports in England the names, &c. of pilots residing within the limits of each port.

Lists of vessels employed for pilotage, with the number of hands, to be annually transmitted to the receiver of sixpenny duty in the port of London.

No pilot shall be taken to sea beyond his limits without his consent, except in case of necessity, and

charge of such boat or vessel, displaying or carrying any such flag, shall for every such offence forfeit and pay a sum of one hundred pounds.

XXXIV. And be it further enacted, that if any boat or vessel shall run before any ship or vessel not having a licensed pilot on board, when such ship or vessel cannot, from particular circumstances, be boarded for the purpose of directing her course, until a licensed pilot can be put on board, the pilot on board such boat or vessel, or if no pilot shall be on board and the person having charge of her shall run her before such ship or vessel, at the request or by the direction of the master, or other person having the command thereof, then such person having charge of such boat or vessel shall be entitled to the full pilotage for the distance run, until a duly licensed pilot shall be put on board, as if such pilot or person respectively had been actually on board such ship or vessel, and had the charge of her as a pilot.

XXXV. And be it further enacted, that from and after the passing of this act all bodies, politic and corporate, and all and every other person or persons, authorized to appoint or license pilots in or for any port of England, or any of the seas, coasts, harbours, or rivers thereof, or places therein, shall from time to time, as and when each appointment of a pilot shall be by them respectively made, forthwith transmit to the corporation of Trinity House of Deptford Strond, at the Trinity House in London, and to the Commissioners of his Majesty's Customs, at the Custom House in London, the christian and surname, age, and place of residence of every such pilot so appointed, distinguishing the limits within which such pilot is appointed to act, and by whom such appointment is made; and the said bodies politic and corporate, and other persons, authorized to appoint or license pilots as aforesaid, shall and they are hereby required to transmit to the said corporation of Trinity House, at the Trinity House aforesaid, and to the said Commissioners of Customs, at the Custom House aforesaid, annually, on the thirty-first day of December, or within one calendar month afterwards, a list corrected up to the said thirty-first day of December in each year, of the names and residences of all the pilots within their several jurisdictions, in which list so to be transmitted to the Trinity House as aforesaid shall be stated all such alterations (if any) as may have been made in the rates of pilotage charged, or in the rules and regulations for governing pilots within their respective districts.

XXXVI. And whereas by certain acts of parliament for the more effectual performance of quarantine, pilots are required, on going on board ships arriving from foreign parts, in certain cases to give information to the commanders thereof respecting proclamations and Orders in Council relative to the performance of quarantine, which renders it necessary that notice of such proclamations and orders should have been previously communicated to all pilots throughout England; be it further enacted, that the said Commissioners of his Majesty's Customs shall from time to time with all convenient speed transmit to the principal officers of the revenue under their management, at the several ports in England, the names and places of residence of all such pilots of whose nomination they shall receive notice from the proper authority, or who shall be in the list so annually to be transmitted to such commissioners as aforesaid as shall reside within the limits of each port respectively, in order that the said principal officers at the several ports may be enabled to communicate and deliver to every pilot within the limits of such ports respectively copies of all proclamations or Orders in Council respecting the performance of quarantine by ships arriving from infected places, which the said officers are hereby required to communicate accordingly.

XXXVII. And be it further enacted, that the said corporation of Trinity House of Deptford Strond, and the Court of Loadmanage of the Cinque Ports, and all other corporations and persons authorized to manage or direct pilots in any part of England, under the authority of any act of parliament or charter whatever, shall annually, on the first day of January in every year, or within one calendar month then next following, transmit to the office of the receiver of the sixpenny duty in the port of London a list of all the vessels of every description employed by them respectively, or by persons under their authority, for the purposes of pilotage, with the number of men and boys belonging to or serving in any such vessels.

XXXVIII. And be it further enacted, that no pilot shall be taken to sea beyond the limits of his district by the commanding officer of any of his Majesty's ships, or by the master or other person having the command of any other ship or vessel whatever, without such pilot's free consent, except under circumstances of absolute and unavoidable necessity; and then and in such case every pilot so taken to sea shall over and above his pilotage have and receive ten shillings and sixpence

per diem, to be computed from and inclusive of the day next after the day on which the ship or vessel shall pass the limit to which such pilot was engaged to pilot her up to, and until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there.

XXXIX. And whereas certain harbours near the Downs have become much frequented as places of safety, and ships and vessels lying in or sailing through the Downs are oftentimes compelled to run for those harbours, and it is therefore necessary to make provision for the pilotage into and out of such harbours; be it therefore enacted, that all pilots whose licences shall authorize them to pilot ships or vessels from any place to the westward up to London Bridge, shall qualify themselves, and shall be examined as to their qualification and ability to conduct any ship or vessel into and out of Ramsgate harbour, and the harbours of Dover, Sandwich, and Margate, and shall be obliged to pilot any ships or vessels into and out of the said harbours; and if any such pilot shall refuse to take charge of or conduct any ship or vessel into or out of any of the said harbours, such pilot shall forfeit all pay and reward to which he might otherwise have been entitled for the pilotage of any such ship or vessel, and shall be subject to such fine or other punishment as shall be established in that behalf by the by-laws, rules, orders, regulations, or ordinances of the corporation, or other authority, from which the licence of such pilot shall have been derived.

XL. Provided always, and be it further enacted, that every licensed pilot who shall take charge of and conduct any ship or vessel into or out of Ramsgate harbour, or into or out of the harbours of Dover, Sandwich, or Margate, shall be entitled to and shall receive for such pilotage at and after the rate of five shillings for every foot of the draught of water of the ship or vessel so piloted and conducted by him into or out of any such harbours.

XLI. And be it further enacted, that the master or other person commanding any ship or vessel bound to the river Thames, and which shall repair to Standgate Creek, or any other place appointed for the performance of quarantine, shall pay the full charges of pilotage up to Standgate Creek, or other the place so appointed, and the pilot conducting such ship or vessel to Standgate Creek, or other the place so appointed as aforesaid, shall be entitled to the further sum of eight shillings per diem for the days he shall be obliged to remain on quarantine.

XLII. And be it further enacted, that if any pilot taking charge of any ship or vessel into the rivers Thames or Medway shall quit such ship or vessel at Gravesend or Standgate Creek, or in any other part of the Thames or Medway respectively, before such ship or vessel shall have arrived at the place to which she is bound in the said rivers respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall with such consent come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot so quitting such ship or vessel shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to Gravesend, Standgate Creek, or such part of the Thames or Medway respectively as aforesaid, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the bye-laws, rules, orders, regulations, and ordinances hereby directed to remain in force, or which may be made or established in pursuance hereof, any pilots shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

XLIII. And be it further enacted, that every pilot shall write his christian and surname in the log-book of every master or other person having the command for the time being of any ship or vessel entering the port of London, and required to be piloted according to the directions of this act; and every pilot or other person inserting a false name shall forfeit the sum of twenty pounds; and the master or other person having the command of such ship or vessel shall, in making the entry or report of such ship or vessel inwards, insert or cause to be inserted in such entry or report the name or names of the pilot or pilots employed or engaged to pilot such vessel into the said port, which insertion shall be made in the said entry or report (without fee or reward) by the proper officer of the Customs, who shall report the same to the corporation of the Trinity House daily, and to the Lord Warden of the Cinque Ports monthly; and such officer is hereby authorized and required to reject such entry or report, unless and until the name or names of the pilot or pilots so employed or engaged as aforesaid shall be inserted or notified to such officer for insertion in such entry or report as aforesaid; and also that the principal searcher or clearing officer of the Customs at Gravesend shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing

then he shall receive 10s. 6d. per diem above his pilotage.

Pilots shall qualify themselves, and conduct ships into and out of Ramsgate and other harbours.

Penalty for refusal.

Rates for such pilotage.

Ships bound to the Thames repairing to places for performance of quarantine, to pay full charges of pilotage, &c.

Pilots quitting ships in the Thames or Medway, without consent, before arrival at the place to which bound, to forfeit pay, and be liable to penalty.

Pilot to write his name in log-book, and same to be inserted in report of ships entering the port of London, and reported daily to the Trinity House, and monthly to the Lord Warden of the Cinque Ports.

Monthly reports to be made of vessels clearing outwards.

**Penalty.**

outwards from the port of London, and shall transmit monthly lists of such names to the said corporation of Trinity House, on pain of forfeiting a sum not exceeding ten pounds nor less than five pounds, to be paid by each and every of the persons aforesaid who shall neglect to comply with any of the foregoing regulations.

**How pilotage of ships, except those not having British registers, trading to and from the port of London, may be recovered.**

XLIV. And be it further enacted, that all sums of money which shall become due to any licensed pilot for the pilotage of any ship or vessel, except ships and vessels not having British registers, trading to and from the port of London, shall and may be recovered from the owners or masters of such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for the said ship or vessel in the port of her arrival or delivery, as to pilotage inwards, and in the port from whence she shall clear out or sail as to pilotage outwards; which sums of money shall and may be levied in such and in the like manner, according to the amount of any such sums of money as aforesaid respectively, as any penalty or penalties of the like amount may be recovered and levied under and by virtue of this act, demand thereof being made in writing at least fourteen days before such levy.

**Consignees or agents may retain pilotage which they have paid or are liable to.**

XLV. And be it further enacted, that the consignees or agents of any ship or vessel, from whom any sum of money due to any licensed pilot for pilotage shall have been recovered, or shall be recoverable, or by whom any such sum of money shall have been paid, are hereby authorized and empowered to retain in their hands respectively, out of any monies which they may have received, or shall thereafter receive, for or on account of such ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage, and any expences attending the same.

**In what manner pilotage of ships not having British registers trading to and from the port of London shall be paid.**

XLVI. And in order to prevent as well impositions and disputes respecting the charges for, as evasions in the payment of the pilotage of such ships and vessels trading to and from the port of London, and not having British registers, as are by law required to be piloted by pilots licensed by the said corporation of Trinity House, be it further enacted, that from and after the passing of this act the master or other person having the charge of every such ship or vessel which shall enter into or sail from the said port of London, or the consignees of or agents for such ship or vessel, shall pay or cause to be paid at the Trinity House in London, to such person or persons as shall from time to time be in that behalf appointed by the said corporation of Trinity House, the full pilotage inwards and outwards respectively of every such ship or vessel; that is to say, in all cases as to pilotage outwards the full amount of pilotage for the distance which such ship or vessel shall by law be required to be piloted by such licensed pilot as aforesaid; and so far as concerns the pilotage inwards, where a duly licensed pilot shall have been on board such ship or vessel, the full amount of pilotage for the distance piloted by him, if greater than that which such ship or vessel shall be so required to be piloted; and if less, or if no such pilot shall have been on board, then the full amount of the pilotage for the distance which such ship or vessel shall be by law required to be piloted as aforesaid; and if such pilotage inwards be not paid within fourteen days from the day of such ship or vessel's reporting inwards, the same shall and may be recovered by the said corporation from the master or other person having the charge of every such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for such ship or vessel in the said port of London, and shall and may be levied in such and the like manner, according to the amount of any such sums of money respectively, as any penalty or penalties may be recovered and levied under and by virtue of this act.

**Certificate of payment of pilotage to be given.**

XLVII. And be it further enacted, that the person or persons so to be appointed by the said corporation of Trinity House of Deptford Strond as last aforesaid shall, upon his or their receiving such pilotage, give to the person paying the same a certificate thereof in writing, and that no ship or vessel not having a British register, and being required by law to be piloted as aforesaid, shall be cleared at the office of his Majesty's Customs in the said port of London, on her outward bound voyage, without the production of such certificate as aforesaid; and the said person or persons so to be appointed as aforesaid shall, upon proof to the satisfaction of the said corporation that such pilotage service hath been duly performed, pay over to the pilot duly licensed, who shall have had charge of every such ship or vessel, all such sum or sums of money as shall have been received by such person or persons appointed as aforesaid, and as shall be due and payable to such pilot for or in respect of such pilotage service so by him performed, after deducting and retaining thereout the poundage herein-before made payable to the said corporation; and the residue of such pilotage received by such person or persons so appointed as aforesaid shall, together with the

**Receivers to pay over to the pilot what shall be due to him; and the residue with the poundage to be carried to the pilots' fund.**

poundage aforesaid, be carried to and applied to the purposes of the pilots fund of the said corporation of Trinity House of Deptford Strond herein-after mentioned.

XLVIII. Provided always, and be it further enacted, that in any case where such pilotage shall have been received as aforesaid, for or in respect of any ship or vessel not having a British register, if it shall appear to the said corporation that no licensed pilot was in fact employed on board thereof, it shall and may be lawful to and for the said corporation, and they are hereby authorized, if they shall so think fit, out of such pilotage to make or give to any unlicensed person or persons who shall have piloted or assisted in piloting such ship or vessel during so long time as no licensed pilot shall, to the knowledge of such unlicensed person or persons, have offered to take charge thereof, such compensation or reward as in the discretion of the said corporation they shall deem proper in that behalf, not exceeding the sum which would have been payable to a duly licensed pilot.

XLIX. And in order the better to facilitate the ascertaining and settling the amount of the pilotage outward of ships and vessels not having British registers, in the port of London, under the authority of this act, be it further enacted, that the rates or amount of pilotage outward, to be payable and paid in respect of all such ships and vessels, shall from time to time be calculated and made out according to the scale or amount of the tonnage of every such ship or vessel, upon or according to which such ship or vessel shall be rated in the said port of London, to the payment of the light and other dues payable to the said corporation of Trinity House of Deptford Strond, or according to the draught of water thereof, as the said corporation of Trinity House of Deptford Strond shall in their discretion think most proper; any thing herein contained to the contrary thereof notwithstanding.

L. And in order to prevent or settle controversies concerning the draught of water of ships and vessels from time to time on the river Thames, (not having British registers,) be it further enacted, that whenever any difference about the draught of water of any ship or vessel shall arise between the master or other person having the command of any such ship or vessel, and any person who shall have piloted the same into the said river, or who shall be required to pilot the same therefrom, pursuant to the directions of this act, the said corporation of Trinity House of Deptford Strond, or some proper officer or person appointed by them, shall admeasure the draught of water of such ship or vessel, and shall settle and determine the same between the parties, upon application made by either of them to the said corporation within twelve hours after such ship or vessel shall have arrived at her moorings in the river, on any inward voyage, or before the cargo thereof shall be begun to be unladen, or before such ship or vessel shall quit her moorings on any outward voyage, for which admeasurement the officer or person making the same shall be paid one guinea if the ship or vessel shall be below the entrance to the London Docks at Wapping, and half a guinea if above the said entrance to the London Docks, by the person against whom the said officer or person so appointed by the corporation of the Trinity House shall decide.

LI. And whereas it may be expedient from time to time to relieve such ships and vessels not having British registers as may come to the port of London with fish, corn, or other provisions, in manner herein-after directed; be it therefore enacted, that it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and empowered from time to time, at their discretion, to make all such regulations in relation to the piloting of ships not having British registers, bringing fish, corn, or other provisions into the port of London, and which are or ought to be piloted by pilots licensed by the said corporation of Trinity House, for the ease and relief of such ships and vessels in respect of the rates or amount of pilotage hereby made payable or demandable for such ships and vessels, or for the exemption of such ships or vessels from any such rates or amount, or from any rules or regulations as to the pilotage of such ships or vessels under the provisions of this act, or of any other act of parliament relating to pilotage, or under any law or usage whatsoever, as the said corporation of Trinity House of Deptford Strond shall from time to time deem just, proper, and expedient, in relation to such ships and vessels respectively; any thing herein contained to the contrary thereof notwithstanding.

LII. And whereas under and by virtue of the said acts, passed in the forty-eighth and fifty-second years of the reign of his said late Majesty King George the Third, the surplus rates of pilotage imposed on ships not having British registers have been applied in creating funds for the relief of superannuated and infirm pilots belonging to the said corporation of Trinity House of Deptford

Corporation of Trinity House may, out of pilotage received, reward unlicensed persons who have piloted in the absence of a licensed pilot.

How the amount of pilotage outward of foreign vessels shall be ascertained.

How controversies respecting the draught of water of vessels on the Thames shall be settled.

Corporation of Trinity House to make regulations with respect to pilotage of small foreign vessels.

Funds arising from surplus rates of pilotage on ships not having British registers.

ters to be applied for relief of indigent pilots, &c.

Strond and the fellowship of the Cinque Ports respectively, as in the said acts mentioned; and it is expedient that the surplus rates of pilotage imposed by this act on such ships should be carried to such funds respectively, and that the said funds should be applied as herein-after mentioned; be it therefore enacted, that as well the fund already created for such superannuated and infirm pilots belonging to the said corporation of Trinity House of Deptford Strond as aforesaid, as also all such surplus rates by this act imposed or to be imposed as aforesaid, on ships not having British registers, which shall pertain to the establishment of the said corporation of Trinity House, shall be carried to a fund to be called "The Pilots Fund," and that such last-mentioned fund shall be applied by the said corporation in the manner following; (that is to say,) after defraying the expences of carrying this act into execution, so far as concerns the said corporation of Trinity House, the said fund shall be applied by the said corporation for the better support, maintenance, or relief of such indigent pilots belonging to the said corporation, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, and of the wives, widows, and children of such pilots, to be applied and distributed in such manner and under such rules and regulations as the said corporation of Trinity House shall order and provide; and that as well the fund already created for such superannuated and infirm pilots belonging to the society or fellowship of the Cinque Ports as aforesaid, as also all such surplus rates of pilotage by this act imposed or to be imposed as aforesaid on ships not having British registers, which shall pertain to the establishment of the Cinque Ports, shall be applied by the said Court of Loadmanage for the better support, maintenance, or relief of such indigent pilots belonging to the said society or fellowship as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, to be applied and distributed in such manner and under such rules and regulations as the said Court of Loadmanage shall order and provide; and as well all and every the pilots who shall receive any such surplus rates, as also the person or persons to whom the pilotage of ships and vessels not having British registers, and entering into or sailing from the said port of London, is by this act directed to be paid, shall and they are hereby required to pay over all such surplus rates to such receivers, and at such convenient places as shall be in that behalf respectively appointed by the said corporation of Trinity House, and by the said Lord Warden and Court of Loadmanage respectively; of all which receipts, and of the appropriations aforesaid, the said corporation and the said Lord Warden and Court of Loadmanage respectively, shall annually lay an account before parliament, within twenty days after the commencement of each session.

Owners or masters of ships not to be answerable for loss from want of a proper pilot, unless arising from a refusal to take one, &c.

Owners not liable for more than the value of the ship and freight.

Owners or masters not to be liable for loss arising from incompetency of pilots.

This act not to deprive persons of remedies previously existing.

LIII. And be it further enacted, that no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whatsoever, from or by reason or means of no licensed pilot being on board of any such ship or vessel, or of no duly qualified pilot being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means, consistently with her safety, for the purpose of taking on board thereof any pilot who shall be ready and offer to take charge of the same.

LIV. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to make the owner of any ship or vessel liable in any such case for any loss or damage beyond the value of such ship or vessel, and her appurtenances, and the freight due or to grow due for and during the voyage wherein such loss or damage may happen or arise.

LV. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.

LVI. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to deprive any person or persons of any remedy or remedies upon any contract of insurance, or of any other remedy whatsoever, which he or they might have had if this act had not been passed, by reason or on account of the neglect, default, incompetency, or incapacity of any pilot duly acting in the charge of any ship or vessel under or in pursuance of any of the pro-



visions of this act, or by reason or on account of no pilot, or of no duly qualified pilot, being on board of any such ship or vessel, unless it shall be proved that the want of a pilot, or of a duly qualified pilot, shall have arisen from any refusal to take a pilot or a duly qualified pilot on board, or from the wilful neglect of the master of such ship or vessel, in not heaving to or using all practicable means consistently with the safety of such ship or vessel, for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

LVII. Provided always, and be it further enacted, That no pilot licensed or to be licensed as aforesaid who shall have executed the bond herein-before directed to be executed by him, and shall be piloting or conducting, within the limits specified in his licence, any ship or vessel which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be liable to any action for damages at the suit of the party grieved in any greater sum than the amount which shall have been specified by way of penalty in such bond, and the pilotage payable to him in respect of the voyage on which such ship or vessel shall then be, for any loss or damage which shall happen from or by reason or means of his neglect or want of skill whilst acting in his capacity of a pilot on board such ship or vessel.

LVIII. And be it further enacted, That every master of any ship or vessel who shall act himself as a pilot, or who shall employ or continue employed as a pilot any unlicensed person, or any licensed person acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any party licensed and qualified to act as such, within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of such ship or vessel, or have made a signal for that purpose, shall forfeit for every such offence double the amount of the sum which would have been legally demandable for the pilotage of such ship or vessel, and shall likewise forfeit for every such offence an additional penalty of five pounds for every fifty tons burthen of such ship or vessel, if the Corporation of Trinity House of Deptford Strond, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said Lord Warden for the time being, or his lieutenant for the time being, as to cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing.

LIX. Provided always, and be it further enacted, That, for and notwithstanding any thing in this act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers, and coming up either by the North Channel, but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof, or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as herein-after provided or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully, and without being subject to any of the penalties by this act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

LX. Provided also, That from and after the passing of this act it shall and may be lawful for his Majesty, by and with the advice of his Privy Council, or by any Order or Orders in Council, to permit and authorize ships and vessels not exceeding the burthen of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this act imposed on British ships and vessels not exceeding the like burthen.

LXI. Provided also, That nothing in this act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this act for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which

Licensed pilots who have executed bond not liable for neglect or want of skill beyond its penalty and the pilotage.

Penalty on masters of vessels piloted by any other than a licensed pilot.

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

His Majesty in Council may authorize ships not exceeding 60 tons burthen to be conducted without pilots, as British ships of the like burthen (*see n. p. 594.*).

Masters not liable to penalties for employ-

ing unlicensed persons whilst ship in distress.

Master or mate, being owner or part-owner, and residing at Dover, &c., may pilot his own ship up or down the Thames or Medway.\*

Ships brought into any port by pilots may be removed by the master, &c. for certain purposes.

Penalty for reporting to pilots a false account of a vessel's draught of water, or altering the marks denoting such draught.

Description of pilot to be on his licence, &c.

No pilot shall act until his licence has been registered, nor without producing it.

Penalty.

Licences to be delivered up when required, and on death of a pilot his licence shall be returned to the corporation or authority that granted it.

shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in anywise notwithstanding.

LXII. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate of any ship or vessel being the owner or part-owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid, up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.

LXIII. Provided always, and be it further enacted, That when any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate, or other person belonging to such ship or vessel, and having the command thereof, or if in ballast, any person or persons appointed by any owner, or master, or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

LXIV. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any master or other person having the command for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or stern post thereof, denoting the draught of water, or shall be privy and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

LXV. And be it further enacted, That a particular description of the person of every pilot shall be written in, or upon, or indorsed on the back of his licence; and every captain or master or other person having the command of a ship or vessel shall, on receiving a pilot on board, inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master or other person is hereby required forthwith to transmit a copy of such licence to the corporation or other authority by whom such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence as may lead to the discovery of the offender.

LXVI. And be it further enacted, That no person shall take charge of any ship or vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, until his licence shall have been registered by the principal officers of the Custom House of the place at or nearest to which such pilot shall reside, (which officers are hereby required to register the same without fee or reward,) nor without having his licence at the time of his so acting in his personal custody, and producing the same to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot, or to whom he shall offer his services, on pain of forfeiting a sum not exceeding thirty pounds, nor less than ten pounds, for the first offence; and for the second or any subsequent offence, a sum not exceeding fifty pounds, nor less than thirty pounds; and upon further pain, as to any person licensed as aforesaid, of forfeiting his licence or being suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived, either for the first, second, or any subsequent offence.

LXVII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid shall, at all times when thereunto required, produce or deliver and yield up his licence to the corporation or other authority by which the same was

\* By 3 & 4 Vict. c. 68. s. 1., whenever the owner of any ship not having a British register, but belonging to the subjects of foreign countries having treaties of reciprocity with the United Kingdom, shall make it appear that he is deprived of the benefit enjoyed by British subjects under the above sections, 60. and 62., her Majesty in Council may issue orders or certificates declaring on what terms, subject to what conditions, within what limits, and for how long such ships in such orders mentioned may be piloted, without having a duly licensed pilot on board.

granted; and that on the death of any such pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall without wilful delay transmit such licence to the corporation or other authority by which the same was granted, on pain of such pilot, executor, administrator, or other person forfeiting for any neglect therein a sum not exceeding twenty pounds nor less than forty shillings.

LXVIII. And be it further enacted, That from and after the passing of this act, if any pilot licensed by virtue of this act, or otherwise duly licensed, shall keep, or be concerned in keeping, either by himself or any agent or servant, or other person, or shall in any way be interested in the keeping of any public house or tavern or place of public entertainment, or in the selling of any wine or spirituous liquors, or tobacco or tea (unless such pilot shall have kept or been concerned or interested in the same before the First day of March, One thousand eight hundred and eight, and shall be duly authorized by the corporation, or other authority under which such pilot shall act, to continue in such business or employment); or if any pilot, licensed as aforesaid, shall be convicted of any offence against any law or laws relating to the revenues of customs or excise, or shall be concerned in or shall wilfully connive at any indirect practices or frauds against the revenues of customs or excise, or shall procure, abet, connive at, or participate in any destruction, spoil, or concealment, fraud, exaction, or corrupt practice relating to ships or vessels, or persons in distress at sea, or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such ships or vessels, or relating to the crew or passengers belonging thereto, or the monies, goods, or chattels of any of them, then and in every such case every pilot shall (over and above all other punishments, mulcts, and penalties for such offences,) be adjudged to forfeit his licence, or shall be suspended from acting as a pilot, by and at the discretion of the corporation, or other authority from which such pilot's licence was derived.

LXIX. And be it further enacted, That if any person suspended or adjudged to have forfeited his licence as a pilot, shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel as a pilot, such person shall be liable to all such penalties, to be recovered and applied in like manner and form as are provided by this act, against any person who shall pilot or conduct any ship or vessel without ever having been licensed as a pilot.

LXX. And be it further enacted, That it shall be lawful for any licensed pilot within the limits of his licence, and the extent of his qualification therein expressed, to supersede in the charge of any ship or vessel any person not licensed to act as a pilot, or not licensed so to act within such limits, or acting beyond the extent of his qualification; and every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits in which such ship or vessel shall actually be, or beyond the extent of his qualification, as expressed in his licence, after any pilot, duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding fifty pounds nor less than twenty pounds.

LXXI. Provided always, and be it further enacted, That for and notwithstanding any thing in this act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this act imposed, assume, or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where and so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance which at the time could be procured.

LXXII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid, who shall, when not actually engaged in his capacity of pilot, refuse or decline or wilfully delay to go off to or on board of or to take charge of any ship or vessel wanting a pilot, and within the limits specified in his licence, and of which he shall be qualified to take charge, upon the usual signal for a pilot being displayed from such ship or vessel, or upon being required so to do by the captain, or by any commissioned or warrant officer of or belonging to such ship or vessel (if the same shall be in his Majesty's service), or by the master or other person having the command of such ship or vessel, or by any person or persons interested therein as principal or agent (if the same shall not be in his Majesty's service), or upon being required so to do in either of the cases aforesaid, by any officer of the corporation or society to which such pilot shall belong, or by any

Penalty.

Pilots keeping public houses, &c. (unless authorized) or offending against the revenue laws, &c. shall forfeit their licences or be suspended.

Pilots suspended or adjudged to have forfeited their licences, liable to penalty for acting.

Licensed pilots may supersede unlicensed ones.

Penalty on unlicensed persons acting as pilots after a proper pilot shall have offered to take charge of the ship.

When unlicensed persons, &c. may act as pilots.

Penalty on pilots who shall decline to go off to or take charge of vessels, or who shall quit the same.

principal officer of his Majesty's customs (unless in any of the cases aforesaid) it shall be unsafe for such pilot to obey such signal, or comply with such requisition, or he shall be prevented from so doing by illness or other sufficient cause to be shown by him in that behalf; and every pilot licensed or to be licensed as aforesaid, who shall on any frivolous pretext quit any ship or vessel, or decline the piloting thereof, after he has been engaged to pilot the same, or after going alongside thereof, before the service shall have been performed for which he was hired, and without leave of the captain of such ship or vessel (if in his Majesty's service), or of the master or other person having the command of such ship or vessel (if not in his Majesty's service), shall forfeit for every such offence any sum not exceeding one hundred pounds, nor less than ten pounds, and shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed.

Penalty on pilots for employing or requiring the employment of any bont, &c. beyond what is necessary, thereby to increase expence.

LXXIII. And be it further enacted, That in case any pilot, licensed or to be licensed as aforesaid, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of any boat, anchor, cable, hawser, or any other matter or thing in or for the service or pretended service of such ship or vessel beyond what shall actually and *bonâ fide* be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expence of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever, then and in every such case the person so offending shall forfeit and pay a sum not exceeding fifty pounds, nor less than ten pounds, and shall also be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom he was licensed.

Penalty for lending licence, and for drunkenness, and for conducting any vessel into danger, or injuring the same, or obtaining charge thereof by misrepresentation.

LXXIV. And be it further enacted, That in case any pilot, licensed or to be licensed as aforesaid, shall lend his licence to any unlicensed person to assist him in acting or claiming to act as a licensed pilot, or in case any such licensed pilot, or any person not being a pilot, but acting under pretext or colour of being a pilot, shall by drunkenness render himself incapable of conducting any ship or vessel, or shall wilfully or negligently run any ship or vessel on shore, or lose or injure the same, or the tackle or furniture thereof, or shall wilfully and knowingly conduct, lead, decoy, or betray any ship or vessel into danger in any manner not already provided against by any statute or statutes, or shall unnecessarily or improperly cut any cable or cables of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly; or if any such person shall by wilful misrepresentation of any circumstances upon which the safety of any ship or vessel shall appear materially to depend, for the time being, obtain or endeavour to obtain the charge and conduct of any such ship or vessel, then and in every such case the person so offending, or who shall aid in, procure, abet, or connive at the committing of any such offence or offences, shall, besides being liable to damages at the suit of the party grieved, forfeit and pay a sum not exceeding one hundred pounds nor less than twenty pounds; and if the person so offending shall be a pilot, he shall also be liable to be deprived of his licence, or suspended from acting as a pilot at the discretion of the corporation or other authority by whom his licence was granted.

Penalty on pilots for not obeying the orders of dock masters.

LXXV. And whereas the dock master or dock masters appointed by divers dock companies in the port of London, under and by virtue of divers acts of parliament, have power and authority to direct the mooring, and unmooring, moving or removing of ships and other vessels, within certain distances from the entrances out of the river Thames into the docks of such companies respectively; be it therefore enacted, That from and after the passing of this act, if any pilot having the charge or direction of any ship or vessel within such distances from the respective entrances into the said docks respectively from the river Thames, and either intended to go into or having recently come out of the docks of the said companies respectively, shall neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot by the said dock master or dock masters respectively, under and by virtue of and agreeably to the powers vested in him and them by any act or acts of parliament, touching or relating to the mooring, unmooring, moving, or removing of such ships or vessels so being under the charge or direction of such pilot as aforesaid, then and in every such case, every pilot so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than twenty pounds; and every such pilot shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed.

LXXXVI. And be it further enacted, That all fines, penalties, or forfeitures herein-before or herein-after imposed by this act, or by any of the bye-laws, rules, orders, regulations, or ordinances hereby directed to remain in force, or hereafter to be made under the authority of this act, which shall exceed the sum of twenty pounds (the manner of levying whereof shall not by this act be otherwise expressly provided for), and likewise all fines, penalties, or forfeitures imposed as aforesaid (the manner of levying which shall not by this act be otherwise expressly provided for), in cases where the lowest penalty recoverable not being greater than twenty pounds, and the largest penalty recoverable being greater than twenty pounds, the party prosecuting shall proceed in respect thereof for a sum greater than twenty pounds, with the written consent of the Corporation of Trinity House of Deptford Strond, or of the said Lord Warden or his lieutenant for the time being respectively (as the case may be), shall and may be recovered with full costs of suit, by action of debt, bill, plaint, or information in any of his Majesty's Courts of Record at Westminster, to be commenced within twelve calendar months next after such offence or offences shall be committed, or within such other time as is herein-after in that behalf directed; the venue in which said action, bill, plaint, or information shall and may, at the option of the plaintiff or informant, be laid, and the said action, bill, plaint, or information tried either in the county of Middlesex or the City of London, or else in such county or place wherein the offence or offences shall have been committed, and no essoign, protection, wager of law, or any more than one imparlance, shall be allowed; and in any such case or cases it shall be lawful to sue for the largest penalty or penalties recoverable in that behalf, and the jury giving the verdict shall and may award either such largest penalty or penalties, or any other smaller sum or sums of money, not less than the sum specified as the lowest penalty recoverable in that behalf.

How penalties above 20*l.* may be recovered.

LXXXVII. And be it further enacted, That all fines, penalties, or forfeitures herein-before or herein-after imposed by this act, or by any of the bye-laws, rules, orders, regulations, or ordinances hereby directed to remain in force, or hereafter to be made under the authority of this act, and which shall not exceed twenty pounds, (the manner of levying whereof shall not by this act be otherwise expressly provided for,) and likewise all fines, penalties, or forfeitures imposed as aforesaid (the manner of levying which shall not by this act be otherwise expressly provided for), in cases where the lowest penalty recoverable, not being greater than twenty pounds, and the largest penalty recoverable being greater than twenty pounds, the party prosecuting shall proceed in respect thereof for any sum not exceeding twenty pounds, with such written consent as aforesaid, shall and may be levied and recovered within six calendar months after the offence or offences committed, or within such other times as is herein-after in that behalf directed, before any justice or justices of the peace for the county, city, division or place where the offence or offences shall be committed; or if committed by any pilot, then before any justice or justices of the peace for the county, city, division, or place aforesaid, or before any justice or justices of the peace, or any magistrate or magistrates of the city, town, or port to which such pilot shall belong; or if committed by any owner or master of any ship or vessel, before any justice or justices of the peace for the county, city, division, or place where the offence or offences shall have been committed, or before any justice or justices of the peace, or any magistrate or magistrates of the county, city, town, or port at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed on any part of the sea from Orfordness to the mouth of the river Thames, or from Dungeness to the mouth of the river Thames, or upon the rivers Thames or Medway, then only before some justice or justices of the peace of the counties of Kent, Surrey, Essex or Middlesex, or before some magistrate or magistrates of the city of London; and all and every the justice and justices, magistrate and magistrates aforesaid, is and are hereby empowered and required, upon complaint to him or them made, to grant a warrant to bring before him or them such offender or offenders at the time or place in such warrant specified; and if on conviction of the offender or offenders respectively on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath, (which oath such justice or justices, magistrate or magistrates, is and are hereby empowered to administer,) such fine, penalty, or forfeiture shall not be forthwith paid, it shall and may be lawful to and for such justice or justices, magistrate or magistrates, to levy the penalty by distress, and for want of distress to commit every such offender or offenders to the common gaol or house of correction for the county, city, or place where such offender or offenders shall be convicted, there to remain with-

How penalties not exceeding 20*l.* may be recovered.

out bail or main-prize for any time not exceeding six calendar months, nor less than twenty-one days, unless such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid: provided always, that in case the said respective periods of twelve calendar months and six calendar months, or either of them, within which fines, penalties, or forfeitures are to be sued for as aforesaid, shall in any case or cases elapse and run out before any action or prosecution hereby authorized and directed shall have been commenced for the recovery of such fines, penalties, or forfeitures; and if it shall in manner herein-after mentioned be made to appear, as soon after as the circumstances of the case shall reasonably admit, that the commencement of the action or prosecution has been delayed by reason of the absence of any party or parties, whether offending or complaining, or by the absence of any necessary witness or witnesses, then upon such circumstances being stated by affidavit in writing, made before any judge of any of his Majesty's Courts of Record at Westminster, it shall thereupon be lawful for any such judge or judges to order or authorize the commencement of such action or prosecution within such further time as such judge shall think fit to limit in that behalf; and in such case the action or actions, prosecution or prosecutions so ordered or authorized shall and may be commenced and prosecuted within the time or respective times so limited, in like manner and with the like effect in all respects as if such prosecutions had been commenced and prosecuted within the said respective periods of twelve months and six months hereby limited.

Justice of any county into which an offender may escape may endorse the original warrant, which shall authorize the peace officers to execute it.

LXXVIII. And be it further enacted, That in case any person against whom a warrant shall be issued by any justice or justices, magistrate or magistrates, before or after any conviction for any offence against this act, shall escape, go into, or reside, or be in any other county, riding, division, city, liberty, town, or place not within the jurisdiction of the justice or justices, magistrate or magistrates, granting such warrant, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place into which such person shall escape, either before or after conviction, and they and every of them are hereby required, upon proof made upon oath of the handwriting of any justice or justices, magistrate or magistrates, granting such warrant, to endorse his or their name or names on such warrant, and the same when so endorsed shall be sufficient authority to all peace officers to execute such warrant in such other county, riding, division, city, town, or place out of the jurisdiction of the justice or justices granting the said warrant; and any justice or justices respectively, on the offender being apprehended and brought before him or them, within their respective jurisdictions, may proceed to hear and determine the complaint, in the same manner as if it had originally arisen within his or their respective jurisdictions, or may direct the offender to be carried, and such offender shall accordingly in that case be carried, to or before the justice or justices who granted the original warrant, to be dealt with according to law.

Witnesses not appearing may be committed to the house of correction.

LXXIX. And be it further enacted, That if any person who shall be summoned as a witness upon any complaint or information before any justice or justices of the peace, magistrate or magistrates, shall refuse or neglect to appear at the time by such summons appointed, having no just cause for such neglect or refusal, it shall be lawful for such justice or justices, magistrate or magistrates, on proof of such summons having been served, and of a tender of reasonable expences having been made to such person on his being served with such summons, to issue a warrant, under his hand and seal or their hands and seals, to bring such person before him or them; and if on appearance, or on being brought before any justice or justices, magistrate or magistrates, such person shall refuse to be examined on oath concerning the premises, without having some just cause for such refusal, it shall be lawful for such justice or justices, magistrate or magistrates, by warrant under his hand and seal or their hands and seals, to commit such person to the house of correction of the county, city, division, or place where any such person shall be apprehended, there to remain for any time not exceeding six weeks nor less than ten days, as any such justice or justices, magistrate or magistrates, shall direct.

Persons convicted of giving false testimony guilty of perjury.

LXXX. And be it further enacted, That every person who in any examination upon oath, under the provisions of this act, shall wilfully give false testimony, or a false account of the matter sworn to by such person, shall be liable to be prosecuted for the same by indictment; and if duly convicted of false swearing in the premises, shall be subject and liable to such punishments, disqualifications, and disabilities as any person would be subject or liable to for wilful and corrupt perjury in any other case by the laws and statutes of the realm.

Convictions may be drawn

LXXXI. And for the more easy and speedy conviction of offenders against

this act, be it further enacted, That all and every justice and justices of the peace, magistrate or magistrates, before whom any person shall be convicted of any offence against this act, or against any bye-law, rule, regulation, or order hereby directed to remain in force, or hereafter to be made under the authority hereof, shall and may cause the conviction to be drawn up according to the following form, or in words to the like effect; videlicet,

up in the following form.

“ Be it remembered, That on the \_\_\_\_\_ day of \_\_\_\_\_ A. B. is convicted in the year of our Lord \_\_\_\_\_ before me [or us], one [or two, as the case may be] of his Majesty's justices of the peace for the \_\_\_\_\_ [here specify the offence, and the time and place when and where committed, as the case may be], contrary to an act passed in the sixth year of the reign of King George the Fourth, intituled [here insert the title of this act], and I [or we] do adjudge that the said [insert the offender's name] hath therefore forfeited the sum of [here insert the penalty]. Given under my hand and seal [or our hands and seals] the day and year first above written.”

And no certiorari, or other writ or process for the removal of any such conviction, or any proceedings thereon, into any of his Majesty's Courts of Record at Westminster, shall be allowed or granted.

LXXXII. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace, magistrate or magistrates before mentioned, of any offence or offences against this act, or against any bye-law, rule, order, regulation, or ordinance hereby directed to remain in force, or hereafter to be made under the authority hereof, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against, and of the matter thereof, and within fourteen days next after such notice entering into a recognizance before some justice of the peace for such county, city, or place, with sufficient sureties, conditioned to try such appeal, and for abiding the determination of the Court therein; and such justices so assembled shall, upon due proof of such notice having been given and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable (and the decision of the said justices therein shall be final, binding, and conclusive); and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by certiorari or any other writ or process whatsoever into any of his Majesty's Courts of Record at Westminster or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding.

Appeal may be made to the quarter sessions, who may finally determine the matter, and award costs.

LXXXIII. And be it further enacted, That one third of all fines or penalties to be levied in pursuance of this act, or under any bye-law, rule, order, regulation, or ordinance hereby directed to remain in force, or hereafter to be made under the authority of this act, by whomsoever incurred, (save and except such fines or penalties the application whereof shall by this act be otherwise expressly provided for,) shall go to the person who shall inform or sue for the same, and the remainder of all such fines or penalties shall be carried to and applied to the purposes of the said fund belonging to the said Corporation of Trinity House, called “The Pilot's Fund,” in case such fines or penalties shall be incurred by pilots licensed by the said corporation, or by any person or persons in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned; and in case such fines or penalties shall be incurred by pilots belonging to the fellowship of the Cinque Ports, or by pilots under any other jurisdictions or authorities, or by any other person or persons in relation to any matters wherein such pilots respectively shall be in anywise concerned, then the remaining two thirds of such last-mentioned fines or penalties shall be carried to and applied to the purposes of such fund as hath been or shall be created for the relief of such indigent pilots belonging to the said fellowship, or such other jurisdictions or authorities respectively as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity.

Proceedings not to be quashed for want of form or removed by certiorari. Application of penalties.

LXXXIV. And be it further enacted, That if any suit or action shall be brought or prosecuted against any person or persons for any thing done or to be done in pursuance of this act, in every such case the action or suit shall be commenced within six calendar months next after the fact committed, and not otherwise, and shall be laid or brought in the county, city, or place where the cause of

Limitation of actions.

ters to be applied for relief of indigent pilots, &c.

Strond and the fellowship of the Cinque Ports respectively; as in the said acts mentioned; and it is expedient that the surplus rates of pilotage imposed by this act on such ships should be carried to such funds respectively, and that the said funds should be applied as herein-after mentioned; be it therefore enacted, that as well the fund already created for such superannuated and infirm pilots belonging to the said corporation of Trinity House of Deptford Strond as aforesaid; as also all such surplus rates by this act imposed or to be imposed as aforesaid, on ships not having British registers, which shall pertain to the establishment of the said corporation of Trinity House, shall be carried to a fund to be called "The Pilots Fund," and that such last-mentioned fund shall be applied by the said corporation in the manner following; (that is to say,) after defraying the expences of carrying this act into execution, so far as concerns the said corporation of Trinity House, the said fund shall be applied by the said corporation for the better support, maintenance, or relief of such indigent pilots belonging to the said corporation, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, and of the wives, widows, and children of such pilots, to be applied and distributed in such manner and under such rules and regulations as the said corporation of Trinity House shall order and provide; and that as well the fund already created for such superannuated and infirm pilots belonging to the society or fellowship of the Cinque Ports as aforesaid, as also all such surplus rates of pilotage by this act imposed or to be imposed as aforesaid on ships not having British registers, which shall pertain to the establishment of the Cinque Ports, shall be applied by the said Court of Loadmanage for the better support, maintenance, or relief of such indigent pilots belonging to the said society or fellowship as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, to be applied and distributed in such manner and under such rules and regulations as the said Court of Loadmanage shall order and provide; and as well all and every the pilots who shall receive any such surplus rates, as also the person or persons to whom the pilotage of ships and vessels not having British registers, and entering into or sailing from the said port of London, is by this act directed to be paid, shall and they are hereby required to pay over all such surplus rates to such receivers, and at such convenient places as shall be in that behalf respectively appointed by the said corporation of Trinity House, and by the said Lord Warden and Court of Loadmanage respectively; of all which receipts, and of the appropriations aforesaid, the said corporation and the said Lord Warden and Court of Loadmanage respectively, shall annually lay an account before parliament, within twenty days after the commencement of each session.

Owners or masters of ships not to be answerable for loss from want of a proper pilot, unless arising from a refusal to take one, &c.

Owners not liable for more than the value of the ship and freight.

Owners or masters not to be liable for loss arising from incompetency of pilots.

This act not to deprive persons of remedies previously existing.

LIII. And be it further enacted, that no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whatsoever, from or by reason or means of no licensed pilot being on board of any such ship or vessel, or of no duly qualified pilot being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means, consistently with her safety, for the purpose of taking on board thereof any pilot who shall be ready and offer to take charge of the same.

LIV. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to make the owner of any ship or vessel liable in any such case for any loss or damage beyond the value of such ship or vessel, and her appurtenances, and the freight due or to grow due for and during the voyage wherein such loss or damage may happen or arise.

LV. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.

LVI. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to deprive any person or persons of any remedy or remedies upon any contract of insurance, or of any other remedy whatsoever, which he or they might have had if this act had not been passed, by reason or on account of the neglect, default, incompetency, or incapacity of any pilot duly acting in the charge of any ship or vessel under or in pursuance of any of the pro-



visions of this act, or by reason or on account of no pilot, or of no duly qualified pilot, being on board of any such ship or vessel, unless it shall be proved that the want of a pilot, or of a duly qualified pilot, shall have arisen from any refusal to take a pilot or a duly qualified pilot on board, or from the wilful neglect of the master of such ship or vessel, in not heaving to or using all practicable means consistently with the safety of such ship or vessel, for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

LVII. Provided always, and be it further enacted, That no pilot licensed or to be licensed as aforesaid who shall have executed the bond herein-before directed to be executed by him, and shall be piloting or conducting, within the limits specified in his licence, any ship or vessel which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be liable to any action for damages at the suit of the party grieved in any greater sum than the amount which shall have been specified by way of penalty in such bond, and the pilotage payable to him in respect of the voyage on which such ship or vessel shall then be, for any loss or damage which shall happen from or by reason or means of his neglect or want of skill whilst acting in his capacity of a pilot on board such ship or vessel.

LVIII. And be it further enacted, That every master of any ship or vessel who shall act himself as a pilot, or who shall employ or continue employed as a pilot any unlicensed person, or any licensed person acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any party licensed and qualified to act as such, within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of such ship or vessel, or have made a signal for that purpose, shall forfeit for every such offence double the amount of the sum which would have been legally demandable for the pilotage of such ship or vessel, and shall likewise forfeit for every such offence an additional penalty of five pounds for every fifty tons burthen of such ship or vessel, if the Corporation of Trinity House of Deptford Strond, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said Lord Warden for the time being, or his lieutenant for the time being, as to cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing.

LIX. Provided always, and be it further enacted, That, for and notwithstanding any thing in this act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers, and coming up either by the North Channel, but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof, or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as herein-after provided or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully, and without being subject to any of the penalties by this act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

LX. Provided also, That from and after the passing of this act it shall and may be lawful for his Majesty, by and with the advice of his Privy Council, or by any Order or Orders in Council, to permit and authorize ships and vessels not exceeding the burthen of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this act imposed on British ships and vessels not exceeding the like burthen.

LXI. Provided also, That nothing in this act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this act for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which

Licensed pilots who have executed bond not liable for neglect or want of skill beyond its penalty and the pilotage.

Penalty on masters of vessels piloted by any other than a licensed pilot.

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

His Majesty in Council may authorize ships not exceeding 60 tons burthen to be conducted without pilots, as British ships of the like burthen (see a. p. 594.).

Masters not liable to penalties for employ-

ing unlicensed persons whilst ship in distress.

Master or mate, being owner or part-owner, and residing at Dover, &c., may pilot his own ship up or down the Thames or Medway.\*

Ships brought into any port by pilots may be removed by the master, &c. for certain purposes.

Penalty for reporting to pilots a false account of a vessel's draught of water, or altering the marks denoting such draught.

Description of pilot to be on his licence, &c.

No pilot shall net until his licence has been registered, nor without producing it.

Penalty.

Licences to be delivered up when required, and on death of a pilot his licence shall be returned to the corporation or authority that granted it.

shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in anywise notwithstanding.

LXII. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate of any ship or vessel being the owner or part-owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid, up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.

LXIII. Provided always, and be it further enacted, That when any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate, or other person belonging to such ship or vessel, and having the command thereof, or if in ballast, any person or persons appointed by any owner, or master, or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

LXIV. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any master or other person having the command for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or stern post thereof, denoting the draught of water, or shall be privy and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

LXV. And be it further enacted, That a particular description of the person of every pilot shall be written in, or upon, or indorsed on the back of his licence; and every captain or master or other person having the command of a ship or vessel shall, on receiving a pilot on board, inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master or other person is hereby required forthwith to transmit a copy of such licence to the corporation or other authority by whom such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence as may lead to the discovery of the offender.

LXVI. And be it further enacted, That no person shall take charge of any ship or vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, until his licence shall have been registered by the principal officers of the Custom House of the place at or nearest to which such pilot shall reside, (which officers are hereby required to register the same without fee or reward,) nor without having his licence at the time of his so acting in his personal custody, and producing the same to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot, or to whom he shall offer his services, on pain of forfeiting a sum not exceeding thirty pounds, nor less than ten pounds, for the first offence; and for the second or any subsequent offence, a sum not exceeding fifty pounds, nor less than thirty pounds; and upon further pain, as to any person licensed as aforesaid, of forfeiting his licence or being suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived, either for the first, second, or any subsequent offence.

LXVII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid shall, at all times when thereunto required, produce or deliver and yield up his licence to the corporation or other authority by which the same was

\* By 3 & 4 Vict. c. 68. s. 1., whenever the owner of any ship not having a British register, but belonging to the subjects of foreign countries having treaties of reciprocity with the United Kingdom, shall make it appear that he is deprived of the benefit enjoyed by British subjects under the above sections, 60. and 62., her Majesty in Council may issue orders or certificates declaring on what terms, subject to what conditions, within what limits, and for how long such ships in such orders mentioned may be piloted, without having a duly licensed pilot on board.

granted ; and that on the death of any such pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall without wilful delay transmit such licence to the corporation or other authority by which the same was granted, on pain of such pilot, executor, administrator, or other person forfeiting for any neglect therein a sum not exceeding twenty pounds nor less than forty shillings.

Penalty.

LXVIII. And be it further enacted, That from and after the passing of this act, if any pilot licensed by virtue of this act, or otherwise duly licensed, shall keep, or be concerned in keeping, either by himself or any agent or servant, or other person, or shall in any way be interested in the keeping of any public house or tavern or place of public entertainment, or in the selling of any wine or spirituous liquors, or tobacco or tea (unless such pilot shall have kept or been concerned or interested in the same before the First day of March, One thousand eight hundred and eight, and shall be duly authorized by the corporation, or other authority under which such pilot shall act, to continue in such business or employment); or if any pilot, licensed as aforesaid, shall be convicted of any offence against any law or laws relating to the revenues of customs or excise, or shall be concerned in or shall wilfully connive at any indirect practices or frauds against the revenues of customs or excise, or shall procure, abet, connive at, or participate in any destruction, spoil, or concealment, fraud, exaction, or corrupt practice relating to ships or vessels, or persons in distress at sea, or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such ships or vessels, or relating to the crew or passengers belonging thereto, or the monies, goods, or chattels of any of them, then and in every such case every pilot shall (over and above all other punishments, mulcts, and penalties for such offences,) be adjudged to forfeit his licence, or shall be suspended from acting as a pilot, by and at the discretion of the corporation, or other authority from which such pilot's licence was derived.

Pilots keeping public houses, &c. (unless authorized) or offending against the revenue laws, &c. shall forfeit their licences or be suspended.

LXIX. And be it further enacted, That if any person suspended or adjudged to have forfeited his licence as a pilot, shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel as a pilot, such person shall be liable to all such penalties, to be recovered and applied in like manner and form as are provided by this act, against any person who shall pilot or conduct any ship or vessel without ever having been licensed as a pilot.

Pilots suspended or adjudged to have forfeited their licences, liable to penalty for acting.

LXX. And be it further enacted, That it shall be lawful for any licensed pilot within the limits of his licence, and the extent of his qualification therein expressed, to supersede in the charge of any ship or vessel any person not licensed to act as a pilot, or not licensed so to act within such limits, or acting beyond the extent of his qualification ; and every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits in which such ship or vessel shall actually be, or beyond the extent of his qualification, as expressed in his licence, after any pilot, duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding fifty pounds nor less than twenty pounds.

Licensed pilots may supersede unlicensed ones.

LXXI. Provided always, and be it further enacted, That for and notwithstanding any thing in this act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this act imposed, assume, or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where and so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance which at the time could be procured.

Penalty on unlicensed persons acting as pilots after a proper pilot shall have offered to take charge of the ship.

When unlicensed persons, &c. may act as pilots.

LXXII. And be it further enacted, That every pilot licensed or to be licensed as aforesaid, who shall, when not actually engaged in his capacity of pilot, refuse or decline or wilfully delay to go off to or on board of or to take charge of any ship or vessel wanting a pilot, and within the limits specified in his licence, and of which he shall be qualified to take charge, upon the usual signal for a pilot being displayed from such ship or vessel, or upon being required so to do by the captain, or by any commissioned or warrant officer of or belonging to such ship or vessel (if the same shall be in his Majesty's service), or by the master or other person having the command of such ship or vessel, or by any person or persons interested therein as principal or agent (if the same shall not be in his Majesty's service), or upon being required so to do in either of the cases aforesaid, by any officer of the corporation or society to which such pilot shall belong, or by any

Penalty on pilots who shall decline to go off to or take charge of vessels, or who shall quit the same.

## No. XVII.

6 Geo. 4. c. 49. (22d June, 1825.)

*An Act for encouraging the Capture or Destruction of piratical Ships and Vessels.*

There shall be paid by the Treasurer of the Navy, on bills made forth by Commissioners, 20*l*. for every piratical person secured or killed during the attack on any piratical vessel, and 5*l*. for every man not taken or killed.

As soon as the amount of the bounty shall be ascertained, bills shall be drawn on the Commissioners of the Navy in manner herein mentioned.

WHEREAS it is expedient to give encouragement to the commanders, officers, and crews of his Majesty's ships of war and hired armed ships to attack and destroy any ships, vessels, or boats, manned by pirates or persons engaged in acts of piracy: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act there shall be paid by the Treasurer of his Majesty's Navy, upon bills to be made forth by the Commissioners of the Navy, to be paid according to the course thereof, without fee or reward, unto the officers, seamen, marines, soldiers, and others, who shall have been actually on board any of his Majesty's ships or vessels of war, or hired armed ships, at the actual taking, sinking, burning, or otherwise destroying of any ship, vessel, or boat, manned by pirates or persons engaged in acts of piracy, since the first day of January, one thousand eight hundred and twenty, the sum of twenty pounds for each and every such piratical person, either taken and secured or killed during the attack on such piratical vessel, and the sum of five pounds for each and every other man of the crew not taken or killed, who shall have been alive on board such pirate vessel at the beginning of the attack thereof; the numbers of such piratical men respectively to be proved by the ship's papers taken on board such piratical ship, vessel, or boat, verified by the oaths of two or more of the persons who shall have found and taken possession of such papers, or by such other evidence as, under the circumstances of the case, shall, by the Judge of the High Court of Admiralty, or by the Judge of any other court authorized to take cognisance of such matter, be deemed sufficient proof thereof.

II. And for the more speedy distribution of such reward payable in respect of pirates or pirate vessels, taken or destroyed in distant parts; be it further enacted, That when and so soon as the amount of the bounty so to be paid, and the numbers of men in respect of whom it shall be payable, shall have been ascertained in manner aforesaid, it shall and may be lawful for the Commissioner of the Navy resident at any of his Majesty's dock-yards abroad, or in the absence of a Commissioner of the Navy, for the naval officer and storekeeper, or if there shall be no such commissioner or naval officer, then for the Commander-in-Chief or senior officer of his Majesty's ships and vessels at the port or place into which the piratical ship, vessel, or boat shall be taken to be proceeded against, or in case of the destruction of the vessel, the place into which the piratical persons seized shall be carried, to draw upon the Commissioners of the Navy a bill or bills at thirty days' sight for the amount of such bounty, which bill or bills shall, upon the said Commissioners being satisfied of the correctness and amount thereof by the production to them of the proof herein-before required, be by them assigned for payment on the Treasurer of the Navy, and when paid be charged as an imprest on the person so drawing the same; and that all bills so to be made out by the Commissioners of the Navy, or to be drawn upon them as aforesaid, shall be made payable to such person or persons as shall be authorized and appointed agents for the appraisement and sales of such piratical ships or boats in respect of which such bounty shall be payable, or for the receipt of such bounty only, in case such piratical ships, vessels, or boats shall have been sunk, burnt, or destroyed, in like manner as by an act made in the forty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act for the Encourage-

45 G. 3. c. 72.\*

\* By the 54 Geo. 3. c. 93. s. 1. (See Appendix, No. XVIII.), such and so many of the clauses and provisions in the 45 Geo. 3. c. 72. contained as relate to prize agents and Greenwich Hospital are, with parts of other acts, repealed. It is questionable, therefore, whether the legislature did not mean to refer in the above section to the 54 Geo. 3. c. 93., instead of to the 45 Geo. 3. c. 72.

The 53d sect. of the 45 Geo. 3. c. 72., referred to above, is the same as the 13th sect. of the 54 Geo. 3. c. 93.

The 54th sect. of the 45 Geo. 3. c. 72., directing the registration by agents of

ment of Seamen, and for the better and more effectually manning his Majesty's Navy during the present War," was directed with respect to the appointment of agents for the appraisement and sale of prizes taken from the enemy; and that the same bounty shall be paid, distributed, and divided by such authorized and appointed agent or agents, to and amongst such persons, and in such manner, form, and proportion as his Majesty, his heirs or successors, by any Order or Orders in Council for that purpose, shall think fit to declare and direct.

III. And be it further enacted, That if any ship, vessel, boat, goods, merchandise, or other property found and taken in the possession of pirates, shall be duly proved in and adjudged by Court of Admiralty, or other court having competent jurisdiction therein, to have belonged to and to have been taken from any of his Majesty's subjects, then such ship, vessel, boat, goods, merchandise, and other property, and every part thereof so proved, shall by the decree of the said court be adjudged to be restored, and shall be accordingly restored to the former owner or owners, proprietor or proprietors thereof respectively, he or they paying for or in lieu of salvage a sum of money equal to one-eighth part of the true value of such ship, vessel, boat, goods, merchandise, and other property respectively; which money shall be paid to and divided and distributed amongst such persons, and in such manner, form, and proportion, as shall by any Proclamation or Order of his Majesty in Council be directed for the distribution of the produce of any ship, vessel, boat, goods, or other property of pirates.

IV. And be it further enacted, That no person or persons who shall desert from any of his Majesty's ships or hired armed vessels, or otherwise from his Majesty's service, shall be entitled to receive any proportion of bounty money, salvage, or other monies payable by virtue of this act; but that the shares of all such persons, as well as all other shares which shall not be legally demanded within the times prescribed by the said act of the forty-fifth year of his late Majesty's reign for the demand of prize money, shall be paid over to the Treasurer of the Royal Hospital at Greenwich, within such times, in such manner, and to and for such uses and purposes, and subject to such provisions, regulations, and exceptions, as in the said act is mentioned with respect to prize-money.

V. And be it further enacted, That all and every person and persons who shall be so nominated and appointed agent or agents as aforesaid, for the appraisement and sale of any piratical ships, vessels, or boats taken by any of his Majesty's ships or vessels, or hired armed ships, or for the distribution of the bounty money by this act given, shall exhibit and cause to be registered their letter or letters of attorney in the respective courts wherein the proceedings touching the vessels so taken, or touching such bounty or salvage, shall be had; and all such agents shall be subject to such forfeitures and disqualifications for not registering the same as in and by the said act of the forty-fifth of his late Majesty's reign are enacted and provided.

Vessels, &c., found in possession of pirates to be restored to the owners, on paying in lieu of salvage one eighth of the value.

No person deserting from his Majesty's service to be entitled to receive any proportion of bounty, &c.

Agents appointed for sale of ships, &c., to register their letters of attorney.

## No. XVIII.

54 Geo. 3. c. 93.\* (18 July, 1814.)

*An Act for regulating the Payment of Navy Prize Money, and the Transmission of Accounts and Payment of Balances to Greenwich Hospital.*

WHEREAS an act passed in the forty-fifth year of the reign of his present Majesty, intituled "An Act for the Encouragement of Seamen, and for the better and more effectually manning his Majesty's Navy during the present War:" and whereas another act passed in the forty-eighth year of his Majesty's reign, intituled "An Act to extend the Provisions of an Act passed in the Forty-fifth Year

45 G. 3. c. 72.

48 G. 3. c. 132.

their letters of attorney, and imposing penalties on default thereof, is the same as the 14th sect. of the 54 Geo. 3. c. 93.

\* Amended by 59 Geo. 3. c. 56., (for which see Appendix, No. XIX.).

49 G. 3. c. 123.

53 G. 3. c. 63.

Recited acts, so far as relates to prize agents, &c. repealed.

Persons running away not entitled to prize; their shares, and shares not claimed in six years, to go to Greenwich Hospital.

On reasonable cause shown, unclaimed shares not forfeited.

Agents secured against claims of run men, &c.

of his present Majesty, for the Encouragement of Seamen and better Manning his Majesty's Navy, in Cases arising in consequence of Hostilities commenced since the passing of the said Act : " and whereas another act passed in the forty-ninth year of his Majesty's reign, intituled " An Act to explain and amend an Act made in the Forty-fifth Year of his present Majesty, for Encouragement of Seamen, and for the better and more effectually Manning his Majesty's Navy during the present War ; and for the further Encouragement of Seamen, and for the better and more effectually providing for the Interest of the Royal Hospital for Seamen at Greenwich, and the Royal Hospital for Soldiers at Chelsea ; and to extend the Provisions of the said Act to Cases arising in consequence of Hostilities commenced since the passing of the said Act : " and whereas another act passed in the fifty-third year of his Majesty's reign, intituled " An Act to extend Two Acts of the Forty-fifth and Forty-ninth Years of his present Majesty to American Prizes : " and whereas it is expedient that sundry of the clauses and provisions in the said acts contained relating to prize agents and to the Royal Hospital for Seamen at Greenwich, in the county of Kent, should be altered and amended, and that further provisions should be made respecting the same ; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That such and so many of the clauses and provisions in the said acts contained as relate to prize agents and to the said Royal Hospital, and are by this act altered, shall be and the same are hereby repealed.

II. And be it further enacted, That no person or persons belonging to any of his Majesty's ships or vessels of war, or to any merchant ship employed in his Majesty's service, who shall run away, or withdraw himself or themselves from the ship or vessel by which any prize or prizes shall be taken from any of his Majesty's enemies, or shall otherwise desert or withdraw himself or themselves from his Majesty's service, before or after notification shall be given by the persons or agents appointed as herein-after directed, of the day appointed for the payment of the several shares to the captors of the said prize or prizes, or who shall be marked on the books of any ship or vessel in the service of his Majesty, his heirs and successors, as having run therefrom, shall have, or be entitled to have or claim, any interest in or benefit from the said share or shares of the said prize or prizes, or the bounty money herein-after mentioned, or any part thereof that shall then remain unpaid ; but such shares, and also the shares of all officers, seamen, marines, soldiers, and others as well on board hired armed ships as on board his Majesty's ships of war, which shall not be legally demanded within six years after the same have been paid to the Treasurer of Greenwich Hospital, by virtue of any law then in force, shall be forfeited to and to the use of the said Royal Hospital, unless with respect to such officers and seamen as shall be marked " run," such mark shall be taken off by order of the commissioners for executing the office of Lord High Admiral of Great Britain, or by order of the Commissioners of his Majesty's Navy : Provided nevertheless, with respect to the shares of such officers, seamen, marines, and soldiers, herein-before mentioned, which shall not be claimed within the time above limited in that behalf, that if reasonable cause shall be shown and allowed by the Directors of Greenwich Hospital for the time being, or five or more of them, or by the Judge of the High Court of Admiralty, why such last-mentioned shares were not claimed in due time, the said shares shall not be forfeited.

III. And be it further enacted, That no agent or agents for prizes or bounty money shall be liable to be sued, impleaded, or arrested by any person or persons who shall be marked " run," from his Majesty's service in the list to be duly certified of the names of the officers, seamen, marines, soldiers, or others who shall be actually on board any of his Majesty's ships of war at the taking of any prize or prizes, or who shall have subsequently deserted from his Majesty's service, unless the person so marked " run," or who shall have subsequently deserted, shall, before any action brought, obtain a certificate of his R. being taken off, and the forfeiture of his share of such prizes and bounty monies being discharged by the Commissioners of his Majesty's Navy, or any other or more of them, and shall produce such certificate to the said agent or agents respectively ; and unless the said agent or agents, on the producing of such certificate, shall refuse to pay the said prize or bounty money in case the same shall be due and payable according to the directions in his Majesty's proclamation, within three months after any such demand made and such certificate produced : Provided always, that if the share of any prize or bounty money of any person who shall have been marked " run," upon the books of, or shall have deserted from any ship or ships in his Majesty's service, and who shall afterwards obtain a certificate of his R. being

taken off, and the forfeiture of his or their share or shares being discharged as aforesaid, shall at the time when such certificate shall be produced to the agent or agents as aforesaid, have been paid to the Treasurer of Greenwich Hospital, such payment shall be a good and sufficient discharge to the agent paying the same.

IV. And be it further enacted, That no agent shall be compellable to distribute any proceeds of any prize, except in the cases in this act directed, until after the time of appeal has elapsed.

V. And be it further enacted, That if the Judge of the High Court of Admiralty, or of the Vice Admiralty Court, in which any prize shall have been condemned, shall certify that the ship or vessel so condemned sailed under the flag and pass of the enemy, or under any commission of war granted by the enemy, then and in such case, on the application or by the direction of the captain or other commander of the ship or vessel making such capture, the proceeds shall be distributed, and an order of the Court may be obtained, at his prayer, on the agent or agents, to distribute the proceeds of such prize before the time of appeal is elapsed, subject nevertheless to the liability of the captor to answer any appeal that may be instituted thereafter during the time limited by law for appeals.

VI. And be it further enacted, That it shall be lawful for the Judge of the High Court of Admiralty, in all cases, either in the present war or in any former war, in which the regular time of appeal has elapsed, or in which the appeal hath been determined, or for any judge of any Court of Vice Admiralty abroad, in any such case as aforesaid, to which any certificate from the Judge of the High Court of Admiralty shall be transmitted at the time of appeal being elapsed, without further prosecution, together with an order of distribution thereon, to make an order for production and verification of accounts, and for the distribution of the proceeds, and to enforce the same by the process of the said Court, by monition and attachment upon the agent or agents in whose hands the proceeds may be lodged, or any other person whomsoever to whom such proceeds may have been committed, and likewise by further process against the sureties of the said agent or agents; and all Courts of Vice Admiralty are hereby empowered, directed, and required, to enforce upon all persons within their jurisdiction all such orders, and all other orders of the High Court of Admiralty, whether relating as prizes, or to any matter or thing relating thereto, within their respective jurisdictions.

VII. And be it further enacted, That all the provisions, rules, regulations, forfeitures, and penalties, respecting the distribution of prize money, and the accounting for and paying over the proceeds of prize in this act contained, shall be extended to all seizures under the Revenue Laws, all grants of his Majesty, all bounties granted by act of parliament, and all other monies whatever, coming to and being in the hands of the prize agents of the officers and crews of any of his Majesty's ships of war, for their use and benefit, by reason of any capture, recapture, or seizure made by the said ships.

VIII. And be it further enacted, That in all cases of condemnation in the High Court of Admiralty, where there is no claimant or appellant before the Court, it shall be lawful for the said Court, at the prayer of the captors, to compel the agents, by process of monition and attachment, to vest the proceeds of the property condemned in such public securities as the captors shall elect, there to remain and accumulate, for the benefit of the parties entitled, till the time of appeal shall be lapsed, subject nevertheless to the further directions of the Court, upon the application of the captors; and in all cases of condemnation in any Court of Vice-Admiralty, where there is no claimant or appellant before the Court, it shall be lawful for the said Court, at the prayer of the captors, to direct the property captured, or the proceeds thereof, to be forthwith transmitted to Great Britain, there to be vested in such public securities, after being sold (if not already converted by sale), as the captors shall elect, until the regular time of appeal shall have lapsed, subject nevertheless to the directions of the High Court of Admiralty, upon the application of the captors.

IX. And be it further enacted, That it shall be lawful for the Judge of the High Court of Admiralty, in all cases wherein any sentence of condemnation pronounced in the said Court is appealed from at the time of serving the inhibition thereon, or at any time thereafter during the pendency of the said appeal, and without prejudice to such appeal, to assign the agent or agents, or other persons in whose hands the proceeds of the prize may be, at the prayer of either party, or of the Treasurer of the Navy, or of the Treasurer of Greenwich Hospital, or his deputy or deputies for such purpose, to bring into and leave in the registry the

Distribution not compellable till time of appeal is elapsed.

Distribution before time of appeal is elapsed, in certain cases.

High Court of Admiralty may order production of accounts and distribution when time of appeal is elapsed, or appeal determined.

Order to be enforced by Vice-Admiralty Courts.

Regulations as to distribution and accounts of prize extended to revenue seizures, &c.

High Court of Admiralty may direct proceeds of property condemned to be invested.

Courts of Vice-Admiralty may direct such proceeds to be transmitted, &c.

On appeal, High Court of Admiralty may direct proceeds to be brought in, &c.

Such proceeds may be invested, &c.

nett proceeds of the sales of such prize, deducting therefrom so much as in the discretion of the Judge shall be requisite to be left in the hands of the agent or agents, for the expences of defending the said appeal; and the proceeds so brought in shall be deposited, in case the parties shall agree thereto, in some public securities at interest in the names of the registrar or deputy registrars, and of such trustees as the parties shall appoint, and the Court shall approve; and in case either party shall refuse his consent thereto, the party praying the same shall have such proceeds laid out and invested in public securities, in manner aforesaid, he giving good and sufficient security to the Court to answer to the other party for any loss or deficiency that may be occasioned thereby, in case such other party shall be ultimately pronounced to be entitled to the property.

Lords of Appeal may order proceeds to be brought in, &c.

X. And be it further enacted and declared, That the Lords Commissioners of Appeals are authorized and empowered in any case of appeal before them, to order at their discretion the proceeds of any prize the subject of such appeal, or any part or parts thereof, to be paid by the agent or agents for such prize, at the requisition of the captors or claimants, into the Court, to be laid out or disposed of at the discretion of the Court on any application made for that purpose, either by the captors or claimants.

High Court of Admiralty may compel production of accounts, and bringing in of proceeds.

XI. And be it further enacted, That on the application of any party interested in the proceeds of any prize, or of any person on behalf of the Treasury of the Navy or Greenwich Hospital, and an affidavit of any such party, or any other person, of his or her belief that there are proceeds of any prize, or papers, or books relating thereto, in the possession of any agent or person or persons, whether the said prize or prizes shall have been taken in the present or in any preceding war, it shall be lawful for the Judge of the High Court of Admiralty to compel the production of the same, and the bringing in of such proceeds, and the answering to such interrogatories touching the same as the Court shall approve; and if it shall appear that the party hath been cited without sufficient cause, he shall be allowed his costs against the party making such affidavit, or at whose instance he hath been unduly summoned.

Penalty on retaining proceeds contrary to this act.

XII. And be it further enacted, That any captor, agent, or other person, who shall acquire or retain the proceeds of any prize contrary to the provisions of this act, except for reasonable cause, to be allowed by the Court in which such prize shall be adjudged, or by the High Court of Admiralty, shall pay interest thereon at the rate of one pound per centum per month, for such time as the same shall so be in their custody or possession, besides all other penalties imposed by this act.

Directions as to appointing prize agents.

XIII. And be it further enacted, That all appraisements and sales of any ship or ships, goods, wares, and merchandise, which shall be taken by any ship or ships of war, shall be made by agents appointed by the flag officers or flag officer, captains or captain, officers or officer, ships' companies or company, and others entitled thereto; that is to say, that if the flag officers or flag officer of any fleet or squadron of ships which shall take any such prize or prizes, or the majority, if more than one, shall appoint one or more person or persons, agent or agents, as aforesaid, then the captains and commanders, or captain and commander entitled thereto, or the majority of them, if more than one, may appoint the like number to act for them; and all the officers and others described in his Majesty's said proclamations, and usually designated the commissioned and warrant officers, may appoint a like number to act for them; and all the remainder of the crew, usually designated the petty officers, and the seamen or marines, may appoint a like number.

Agents to register their powers of attorney.

XIV. And be it further enacted, That all and every person or persons who shall be so nominated and appointed agent or agents as aforesaid for any prize or prizes taken by any ship or ships, vessel or vessels of war, or for receiving the bounty granted by this act, shall exhibit and cause to be registered in the said High Court of Admiralty in Great Britain, or in the respective Courts of Vice-Admiralty in any of his Majesty's dominions where the said prize and prizes, and every of them, shall be proceeded against, his or their respective letter or letters of attorney, appointing him or them agent or agents for the purposes aforesaid; and if any person or persons so appointed agent or agents as aforesaid shall, without sufficient cause to be approved by the Court, omit or delay so to do for the space of twenty days after the monition has been taken out in the said High Court of Admiralty in Great Britain, or in any Court of Vice-Admiralty in his Majesty's dominions, every person so omitting or delaying shall, for every such offence, forfeit the sum of five hundred pounds, and be disqualified for acting as agent for any such prize or prizes.



XV. And be it further enacted, That if any agent or agents shall be appointed after the time when any sentence of condemnation in any of the said Courts of Admiralty shall be given, such agent or agents shall, under the penalties aforesaid, register or cause to be registered in manner aforesaid, his or their respective letter or letters of attorney appointing him or them agent or agents as aforesaid within the space of twenty days after the date of the said letter or letters of attorney.

Also if appointed after condemnation.

XVI. And be it further enacted, That no person or persons, except the person or persons so to be nominated and appointed agent or agents, and who shall actually discharge the duties of agent, shall, under any colour or pretence, receive any part, share, or proportion, of any commission in respect of such agency business, or any emolument, advantage, or benefit, out of any such commission; and all and every person or persons so nominated and appointed agents or agent, who shall give to, or allow to be taken by any other person or persons, and every person who shall take, accept, or receive, either himself, or by any other person on his behalf, or for his use, benefit, or advantage, or the use, benefit, or advantage, of any part of his family, any part, share, or proportion of any such commission, or any emolument, advantage, or benefit thereout, shall, for every such offence, forfeit and pay the sum of one hundred pounds, and also double the amount or value of what shall have been so given, or allowed to be taken, or shall have been so taken and received as aforesaid.

Penalty on persons not being agents who shall share in emoluments of agency business, and on agents permitting the same.

XVII. And be it further enacted, That the registrar or registrars of his Majesty's High Court of Admiralty, and of all other Courts of Admiralty or Vice-Admiralty in his Majesty's dominions, shall from time to time duly enter or register, or cause to be entered or registered, in one or more book or books to be by him or them kept for that purpose only, all letters of attorney that shall be exhibited or delivered to them after the passing of this act, by any agent or agents for any prize or prizes taken or to be taken by any of his Majesty's ships or vessels of war, or hired armed ships, or by any agent or agents for the receipt and distribution of any bounty bill or bills, within fourteen days after the same shall be so exhibited or delivered to such registrar or registrars, at his or their respective offices, which registry shall contain the days of delivery and entry, the dates of the letters of attorney, the names and places of abode of the agents, the names of the prizes taken, or of the ships of war or privateers of the enemy taken, burnt, sunk, or otherwise destroyed, together with the names of the ships or vessels by which such prizes shall have been taken, or by which such ships of war or privateers of the enemy shall have been taken, burnt, sunk, or otherwise destroyed, together with the date of the condemnation, (if any condemnation shall have passed thereon,) and of the appeal, (if any, interposed,) and the registrar or registrars shall, on the twenty-sixth day of March, the twenty-fifth day of June, the thirtieth day of September, and the twenty-sixth day of December, in every year, or within fourteen days after each of such quarter days respectively, so far as relates to the High Court of Admiralty, and with respect to Courts of Vice-Admiralty, as soon after each such quarter days as any ship shall sail for Great Britain, deliver or transmit unto the treasurer of the said hospital, or to the lawful deputy of such treasurer for the time being, a true copy or transcript, under his or their hand or hands, of all such entries as aforesaid within the preceding quarter of a year; and if such registrar or registrars shall neglect or refuse to make or keep such entries, or to transmit or deliver such copies thereof as aforesaid, within the respective times herein-before limited for that purpose, he or they shall, for every such offence, forfeit the sum of five hundred pounds.

Registrars of Courts of Admiralty to register agents' letters of attorney,

and transmit copies of such entries to Greenwich Hospital.

XVIII. And be it further enacted, That every agent, when he shall register the first letter or letters of attorney, which, in pursuance of this act, he shall register after the passing thereof, shall at the same time give security, with two sureties, by a joint and several bond, in the sum of five thousand pounds, to the Court of Admiralty or Vice-Admiralty in which such letter or letters shall be registered, for the due execution of his trust in all matters of prize agency that shall be committed to his care during the present war; and if he shall neglect or refuse so to do, such letter or letters of attorney shall be null and void, and he shall be for ever disabled from acting as an agent in matters of prize.

Agents to give security.

XIX. And be it further enacted, That the registrar or registrars of all and every the Court and Courts of Vice-Admiralty in any of his Majesty's dominions shall, on the twenty-sixth day of March, the twenty-fifth day of June, the thirtieth day of September, and the twenty-sixth day of December, in every year, make out and transcribe, and as soon after each of such quarter days respectively as any ship shall sail for Great Britain, transmit to the treasurer of the said royal hospital at Greenwich, true copies of all and every such letter and letters

Registrars of Courts of Vice-Admiralty to transmit copies of letters of attorney and bonds to Greenwich Hospital.

of attorney as shall have been so registered in the said Court or Courts in the three preceding months; and of all and every bonds or bond given to such Court on registering any such letters of attorney pursuant to the next preceding clause of this act, copies of which shall not already have been transmitted, to which copies the judge and judges of the said Court and Courts shall previously affix his and their seal of office; and the said copies, when received by the said treasurer of the said royal hospital at Greenwich, shall be there registered and open to inspection, by any person, gratis, the charges of which copies, and affixing the seal or seals thereto, and transmitting the same to the treasurer of the said hospital, shall be paid by the said agent or agents at the time of making such registry as aforesaid; and in case such registrar or registrars shall neglect or refuse to transcribe and transmit such copy and copies of the said letter and letters of attorney in manner aforesaid, such registrar and registrars so neglecting or refusing shall forfeit the sum of five hundred pounds.

Copies of letters of attorney so transmitted and registered to be evidence of agency.

XX. And, for the better and more effectual making such letters of attorney evidence of the agency of the person or persons to whom the same shall be made, be it further enacted, That true copies of such letter or letters of attorney, and of transcripts, under seal, transmitted by the said registrar or registrars of the Court and Courts of Admiralty or Vice-Admiralty in his Majesty's dominions, and registered by the said treasurer of Greenwich Hospital, shall from time to time, and at all times hereafter, be good and sufficient evidence of the agency of the person or persons to whom such letter of attorney is or shall be made, and from time to time, and at all times hereafter, shall be admitted, without further or other proof thereof, to be legal evidence in all his Majesty's Courts of Record of Law or Equity; any law, custom, or usage to the contrary thereof notwithstanding.

Directions as to prize lists to be sent to agents.

XXI. And be it further enacted, That upon every capture there shall be sent by the captain or commander of the capturing ship, or some person under his authority, to the agent or agents for such capture, a list of the persons entitled to share therein, which prize list shall be subscribed by the captain or commander, lieutenants, and all the signing officers on board the ship at the time of the capture, and at the time when the said list shall be made out and transmitted, and shall contain the names, ages, and descriptions of the persons entitled to share therein, the names being arranged in the same order in which they stand in the muster books, which said names and descriptions shall be taken from the description book belonging to the said ship, and an alphabetical list or index of the names of all such persons shall be prefixed to such prize list, and the same shall be examined with and corrected by the muster books of such ships by which such captures shall be made, deposited in the Navy Office, and shall be certified by two of the Commissioners of his Majesty's Navy; and in case no such prize list as aforesaid shall be sent to such agent or agents, he or they shall apply to the Commissioners of the Navy for a list of the persons entitled to share in such capture, and such last-mentioned list shall thereupon be made out from the returns in the office of the said Commissioners of the Navy, who shall cause the same to be made out, and certify the truth thereof under their hands, or under the hands of any two or more of them; and any person or persons who shall alter the name or rating of any person or persons in any list which shall have been so certified as aforesaid, or erase or take away any name therefrom, or add any name thereto, after the same shall have been so certified as aforesaid, with intent to defraud any person or persons, or any corporation whatsoever, shall forfeit the sum of five hundred pounds: Provided always, that in case it shall appear at or before distribution, that any error has been committed in the prize list, or in the muster books transmitted to the Navy Office, nothing herein contained shall extend to prevent the correction of such error; nor in case of the omission of any name on the distribution list, such omission having been made through error, to charge the agent further than with the payment of the sum due, together with all expences of the party in recovering the same: Provided also, that if any agreement shall have been made with any person or persons not entitled under his Majesty's proclamation, or the Prize Act, to share in any capture, the agent, or hospital, making distribution according to such agreement, admitted and acknowledged by the persons entitled under the said proclamation or act of parliament, shall not be liable to any penalty on that account: Provided also, that in all cases wherein any officer, petty officer, seaman, non-commissioned officer of marines, or marine, or other person or persons actually entitled to share in any capture, shall, after distribution has been made, be proved, by a comparison with the muster books, or returns in the Navy Office, or otherwise, to the satisfaction of the Commissioners of the Navy, or any three of them, to

Penalty on altering lists, 500*l*.

Directions as to correcting of errors in prize lists; and as to omissions, &c.

have been actually so entitled, but omitted in the distribution list, or included in a class inferior in rank to that in which he had really served by accident or default, it shall and may be lawful for the said Commissioners, or any three of them, to certify such omission or error to the board of directors of the said royal hospital at Greenwich, who shall thereupon cause the amount of the share to which such officer, petty officer, seaman, non-commissioned officer of marines, or marine, or other person or persons, if inserted in the distribution list in his proper class, would have been entitled, to be paid out of the non-claimed or run-men's shares of the same prize, or out of the general fund of unclaimed and forfeited shares of prize money in the hands of the said treasurer of the said royal hospital; and the said treasurer, or his deputy, shall thereupon be entitled to maintain and prosecute in the name of such officer, petty officer, seaman, non-commissioned officer of marines, or marine, or other person or persons, at the charge and to the use of the said hospital, any action or suit against the agent or agents for the recovery of the amount of the money so paid, that the said officer, petty officer, seaman, non-commissioned officer of marines, or marine, or other person, might himself have maintained if he had not received a satisfaction for the same from the said hospital; but if such agent or agents shall be made liable to any such demands in consequence of an omission or mistake in any prize list certified to him or them as aforesaid, it shall be lawful for him or them to stop and retain the amount of the share for which he shall be so liable, out of any prize or bounty money in his or their hands, payable to the captain or commander by whom such prize list was signed and certified as aforesaid, or his executors or administrators, or to have a remedy over by action against him or them, or any of them, for any charge or damage thereby sustained.

XXII. Provided always, and be it further enacted, That where such omissions, misratings, improper descriptions, or errors, shall happen in lists which shall have been made out or certified at the Navy Office, the clerk who shall have made out the said prize lists, or compared the same with the muster books of the capturing ship, shall be liable to make good to the party injured by such omission, misrating, improper description, or error, the loss he shall have sustained thereby, in like manner as the captain or commander of any of his Majesty's ships is liable in cases which may happen when prize lists are made out by him, or any person or persons under his authority, unless the Commissioners of the Navy shall be satisfied that the party is entitled to relief, and shall certify the same to the directors of Greenwich Hospital; in which case the treasurer of the said hospital shall pay or cause to be paid to the person or persons omitted, misrated, or improperly described, or to his or their representatives, the sum which, after due investigation, he or they shall appear to be entitled to, which payment shall be made out of the unclaimed or run-men's shares of the same prizes, or out of the general fund of unclaimed and forfeited shares of prize money in the hands of the said treasurer of the said royal hospital.

XXIII. And be it further enacted, That in all cases of condemnation in any Vice-Admiralty Court, where there is no claimant or appellant before the Court, it shall be lawful for the Judge to compel the agent, at the requisition of the captor, to give security at the time of condemnation for the faithful distribution of the proceeds, or for the remitting thereof to the treasurer of Greenwich Hospital, or to such persons in England as the captors shall appoint, under the directions of the Court, for the purpose of being distributed in England.

XXIV. And be it further enacted, That every agent resident in the United Kingdom shall, within six weeks after any condemnation in the High Court of Admiralty, transmit a notice of such condemnation to the treasurer of Greenwich Hospital, or his deputy, and to the treasurer or paymaster of his Majesty's navy, together with an account of the state of the property condemned at the time of such transmission, according to the schedule marked A. in the Appendix to this act, on pain of forfeiting for every neglect the sum of five hundred pounds, unless a reasonable cause be shown to and approved by the Court of Admiralty.

XXV. And be it further enacted, That every prize agent shall, after the sale of any prize is completed, and before the time of the first payment of the prize money to be distributed, (or at any time thereafter, at the direction of the Court,) exhibit in the respective Court of Vice-Admiralty in which the prize shall have been condemned, or in the High Court of Admiralty; and if such prize shall have been condemned in any Court of Vice-Admiralty abroad, shall, as soon as the same can be done, transmit to the High Court of Admiralty in England an attested copy of the detailed accounts of the sales of such prize, duly verified upon oath, together with attested copies of all vouchers required by the Court, which copies, so transmitted to the said High Court of Admiralty, shall be de-

Clerks of the Navy Office to be responsible for errors, &c.

On condemnations without claim, the Court may compel agents to give security.

Agents to transmit notice of condemnations, and accounts and schedule, to Greenwich Hospital and treasurer of Navy.

Agents to exhibit copies of accounts of sales, &c.

Objections  
thereto to be  
heard, &c.

posited in the public registry thereof; and all parties interested therein shall have liberty to object to the charges and articles therein contained, and the said Court shall confirm or disallow the accounts, upon hearing the objections, and shall make such further order touching the said accounts, and the distribution of the proceeds, as the case may require; and any agent who shall neglect or refuse to bring in a copy of his accounts at the time hereby directed, or who shall proceed to distribute without having exhibited and transmitted a copy of the said accounts, duly verified on oath in manner aforesaid, or who shall refuse or neglect to obey any order of any Court of Admiralty, for the distribution of the proceeds of any such prize or prizes, shall forfeit the sum of five hundred pounds of lawful money of Great Britain, and shall moreover be subject to the process of the Court of Admiralty, by monition and attachment, until he shall have obeyed the order of the said Court; and it shall be lawful for the said Court to pronounce the bond given with the letter or letters of agency to be forfeited, and to levy the penalties secured thereby from the sureties in the said bond.

Agents to trans-  
mit copies of  
accounts of  
sales, &c. to  
Greenwich  
Hospital.

XXVI. And be it further enacted, That every prize agent, at the same time that he shall exhibit or transmit an attested copy of the detailed accounts of the sale of any prize or prizes, together with attested copies of all vouchers, to the Courts of Admiralty or Vice-Admiralty respectively, as directed by this act, shall and he is hereby directed and required to transmit another attested copy of the said detailed accounts and vouchers to the treasurer of the said royal hospital at Greenwich; and every such agent who shall neglect or refuse to transmit such last-mentioned attested copies of accounts and vouchers, shall forfeit and pay the sum of one hundred pounds.

Agents to ad-  
vertise when  
accounts of  
sales to be  
brought in.

XXVII. And be it further enacted, That every agent shall, ten days before he exhibits his account of sales in the registry of the High Court of Admiralty, cause advertisements to be twice inserted in the London Gazette, notifying to all persons concerned the day on which the account of sales of such prize or prizes will be brought into the registry of the said Court.

Per-centage for  
agency to be on  
net proceeds.

XXVIII. And be it further enacted, That from and after the passing of this act, the per-centage for agency, which in no case shall exceed five pounds per centum, shall be charged upon the net proceeds of any prize or prizes, bounty bills, or salvage; such net proceeds to be estimated previous to any deduction for or in respect of law charges.

Notification to  
be made by  
agents of the  
payment of  
prize money,  
&c.

XXIX. And be it further enacted, That after the sale or sales of any prize or prizes which have been or shall be taken from the enemy by any of his Majesty's ships of war or hired armed ships, in this or any former war, or after the receipt of any bounty, or other monies in the nature thereof, payable to his Majesty's navy, by the agent or person authorized to receive the same, public notification, in manner herein-after mentioned, shall be given by the persons or agents appointed as aforesaid, for the payment of the several shares to the captors; (that is to say), if the prize or prizes shall have been or shall be condemned in his Majesty's High Court of Admiralty of Great Britain, then the person or persons, agent or agents, appointed or to be appointed in pursuance of this act for the appraisement and sale of such prize or prizes, shall insert and publish, or cause to be inserted and published such notification, under his or their hand or hands respectively, together with a notification of the amount of an individual's share in each class, in the London Gazette; and if in any Court of Vice-Admiralty, then in some gazette or newspaper of public authority, of the island or place where the prize or prizes shall have been or shall be condemned, and if there shall be no gazette, or such other newspaper published there, then in some one of the most public newspapers of such island or place; and if no newspapers are there published, then by affixing notice to the church, or some other public building, directed by the governor of such island or place; and all persons or agents publishing, or causing to be published every such notification respectively, shall deliver to the collector, comptroller, or searcher for the time being of his Majesty's customs, residing at or belonging to the port or place where the prize or prizes shall have been or shall be condemned, or the lawful deputy or deputies of such collector, comptroller, or searcher, six of those gazettes or other newspapers in which such notification shall be so inserted and published, together with six notifications of the amount of an individual's share in each class; and if there should not be any public newspapers in any such island or place, then such person or persons, agent or agents, shall give six such notifications in writing, under his or their respective hand or hands, together with six such notifications of the amount of an individual's share, to the said collector, comptroller, or searcher, or the deputy or deputies of such collector, comptroller, or searcher aforesaid; and every such collector, comptroller, or searcher, or such deputy or deputies, shall subscribe his or their name or names on some conspicuous part of each of the said

gazettes, newspapers, or written notifications respectively, and shall forthwith deliver one of the said gazettes, newspapers, or written notifications of distributions, together with one of the said notifications of the amount of an individual's share, to the deputy to the treasurer of Greenwich Hospital, resident at the place where such Court of Vice-Admiralty is or shall be established, or to which its jurisdiction shall extend, and by the first ship which shall sail (after his or their receipt of such gazettes, newspapers, or written notifications respectively) from such port or place to any port in Great Britain, shall transmit or send to the treasurer of the royal hospital at Greenwich, or the deputy of such treasurer for the time being, one of the said gazettes, newspapers, or written notifications, together with one of the said notifications of the amount of an individual's share, with his or their name or names so subscribed to and upon the same respectively, to be there registered, and another to the treasurer of the Navy, or his Majesty's paymaster of the Navy in London; and shall, by the second ship or vessel which shall sail from the said port or place to any port or place in Great Britain, transmit in like manner to each of the before-mentioned officers one other of the said gazettes, newspapers, or other notifications, together with one other notification of the amount of an individual's share, marked by him, a duplicate of the former, and shall faithfully preserve and keep the other of the said six gazettes, newspapers, or written notifications, and the other notification of the amount of an individual's share, with his or their name or names thereon subscribed as aforesaid, in his or their custody; and at all ports and places where Vice-Admiralty Courts with jurisdiction in prize causes are or shall be constituted, at which there shall be no collector, comptroller, or searcher, or other officer of the customs, the said gazettes, newspapers, or other notifications of distribution, together with the said notifications of the amount of an individual's share, shall be delivered to and transmitted, and kept respectively in like manner by the registrar or deputy registrar of such Vice-Admiralty Court, and at all other places where prize or bounty money shall be distributed or payable; where there shall be no Court of Vice-Admiralty, the said gazettes, newspapers, or written notifications of distribution, together with the said notifications of the amount of an individual's share, shall be delivered to the principal civil officer of the said place or his deputy, for the purpose of being transmitted and kept as aforesaid; and that in every such printed or written notification as aforesaid, the said person or persons, agent or agents, shall insert or specify the name or names of the prize or prizes about to be distributed, and of the ship or ships by which the same shall have been captured, and also the precise day of the month and year on which such capture or captures shall have been made, and also his or their place or places of abode, Christian and surname or Christian and surnames at full length, and the precise day of the month and year appointed for the payment of the several and respective shares of the prize or prizes to the captors; and all such notifications with respect to prizes condemned or to be condemned in Great Britain, or of which being condemned abroad the distribution shall be made in Great Britain, shall be published in the London Gazette three days at least before any part or parts, share or proportion of any such prize or prizes shall be paid to any such person or persons entitled thereto; and all such notifications with respect to prizes condemned, or to be condemned, in any other part of his Majesty's dominions, where the distribution shall also be made in such other part of his Majesty's dominions, shall be delivered to the said collector, comptroller, or searcher, registrar or deputy registrar, or principal civil officer or officers as aforesaid respectively, or such respective deputy or deputies, one day at least before any part or parts, share or proportion of any such prize or prizes shall be paid to any person or persons entitled thereto, after which several and respective notifications, if any man's share shall remain in the hands of the persons or agents appointed as aforesaid, either belonging to such men as shall be run from his Majesty's service, or which shall not be legally demanded and paid within three months next after such notification, then such share or shares so remaining in such person's or agent's hands, or belonging to such men as shall run from his Majesty's service, shall go and be paid to the treasurer of Greenwich Hospital.

XXX. And be it further enacted, That every prize agent shall, for three months after the distribution has commenced of the proceeds of any prize condemned in England, or of which having been condemned abroad, the distribution shall have commenced in England, or bounty hereby granted, or money in the nature of bounty, keep an office open two days at least in every week, during the usual hours of attendance, for the payment of shares remaining due, which days, together with the place where such payments are to be made, shall be specified in the notification of payments published in the gazette, on pain of forfeiting for

Agents to keep office open two days in a week for payment of shares.

Penalties for neglect of notification and of transmitting the same.

Notifications in gazettes, &c. transmitted and registered to be evidence of agency.

Agents after four months to pay over balances to Greenwich Hospital with accounts, &c.

Penalties.

Substituted agents to be accountable to Greenwich Hospital.

every neglect therein five hundred pounds; and at the conclusion of such three months he shall suspend all further payments to the captors.

XXXI. And be it further enacted, That if any person or agent appointed or to be appointed for appraisement or sale of any prize or prizes taken or to be taken from the enemy by any of his Majesty's ships or vessels of war, or hired armed vessels, or for the distribution of any bounty money, shall neglect or refuse to publish, give, or deliver any notification herein directed or required to be published, given, or delivered, or shall not give, publish, or deliver, any such notification before the payment of any part of such prize or bounty money, or other money in the nature of bounty money, and within the times herein limited, or in the manner herein appointed, or shall not specify or set forth in such notification the matters and things herein directed to be specified and set forth, every such person or agent shall for such offence forfeit and pay any sum not exceeding one hundred pounds, at the discretion of the Court in which the same shall be sued for; and if any collector, comptroller, or searcher of his Majesty's Customs, registrar of any Vice-Admiralty Court, or principal civil officer or officers, or such deputy or deputies as aforesaid, shall neglect or refuse to receive or to attest, or shall not transmit or send any such gazette, newspaper, or written notification or notifications of the amount of an individual's share as aforesaid, in such manner as is by this act directed, every such collector, comptroller, or searcher, registrar of any Court of Vice-Admiralty, principal civil officer or officers, or such deputy or deputies so offending, shall for every such offence forfeit the sum of five hundred pounds.

XXXII. And be it further enacted, That the notifications in all such gazettes, newspapers, and in writing respectively as aforesaid, which shall be so transmitted and attested by such collector, comptroller, or searcher, registrar of any Court of Vice-Admiralty, or principal civil officer or officers, or such deputy or deputies as aforesaid, and registered at the said royal hospital, on proof of the hand-writing of such collector, comptroller, searcher, registrar, principal civil officer or officers, or deputy or deputies, from time to time, and at all times, shall be good and sufficient evidence in all his Majesty's Courts of Law and Equity, and Admiralty, that the person or persons whose name or names is or are therein set forth and specified as the agent or agents of the prize or prizes therein respectively mentioned, is or are such agent or agents.

XXXIII. And be it further enacted, That at the end of four months after the notifications of distribution so given as by this act directed, every prize agent and person authorized to receive any bounty money or other monies in the nature thereof, to which his Majesty's navy are or shall be entitled, shall pay over all shares and balances then remaining unpaid, to the treasurer of Greenwich Hospital, or such person or persons as he shall appoint and depute to receive the same; and shall likewise make out and transmit to the said treasurer of the said royal hospital, or his deputy, a true statement and account in writing, under his or their hand or hands, of the produce of all such prize or prizes, bounty, or other monies, as aforesaid, together with an account of the payments of the several shares to the captors, which shall have then been really and truly by him paid, and shall verify such statement and account on oath, which oath the said treasurer of the said royal hospital, or his deputy, is and are hereby authorized and required to administer; and such agent, or other person authorized as aforesaid, shall, at the same time, deliver to the said treasurer of the said royal hospital, or his deputy, an authentic copy of the distribution list, on which the payments have been made, and also the original prize list delivered by the commander of the capturing ship, or the Commissioners of the Navy, as the case may have been, to the prize agent, or such other person or persons as aforesaid; and every prize agent and person authorized to receive bounty and other monies, as aforesaid, who shall refuse or neglect, as herein directed, to pay such shares and balances within thirty days after the expiration of such four months, shall forfeit the sum of one hundred pounds; and every prize agent or person authorized to receive such bounty or other monies as aforesaid, who shall have neglected or refused to transmit and verify, within such four months, an account as above directed of the proceeds of such prize, bounty, or other monies, as aforesaid, and of the distribution thereof, shall forfeit the sum of five hundred pounds.

XXXIV. And be it further enacted, That when and as often as any agent or agents appointed by the captors of any prize or prizes for the sale and distribution thereof, shall, after the proceeds of such prize or prizes, or any part thereof, or any such bounty money as aforesaid, shall have been received, appoint or substitute any other agent or agents or person or persons to distribute and pay over to any of the captors their shares for or on account of such prize or prizes, and shall remit to such substituted agent or agents or person or persons any sum

or sums of money for distribution as aforesaid, such substituted agent or agents, person or persons, as also the original agent or agents, shall, from the time of such sum or sums of money being received by them respectively, be and they are hereby declared to be answerable and accountable to the said royal hospital for all and every part and parts, share and shares of such sum and sums of money as shall be unclaimed or forfeited by any of the captors entitled to the same, and such substituted agent or agents, person or persons, shall not repay or refund the unclaimed or forfeited shares of such prize or bounty money, or any part thereof, to the original agent or agents, who shall have remitted such money for distribution as aforesaid, but shall, after the time for distribution of such prize money shall have ceased, and in the time in which prize agents are directed by this act to pay over shares or balances remaining in their hands, pay or cause to be paid all unclaimed and forfeited shares of such prize or bounty money unto the treasurer of Greenwich Hospital, or his deputy, in the same manner and under the same restrictions and subject to the same penalties for non compliance as is directed respecting the original agents appointed by the captors of any prize or prizes.

XXXV. And be it further enacted, That every prize agent, or person authorized and empowered to receive and distribute any bounty monies, or other monies, as aforesaid, shall, within ten days after he shall have rendered to the treasurer of Greenwich Hospital, or his deputy, and verified his statement and account of the proceeds and distribution of any prize or prizes, bounty or other monies as aforesaid, deliver or transmit to the treasurer or paymaster of his Majesty's navy a copy of such statement and account, under the like penalty for neglect as is by this act imposed upon him for neglecting to render such statement and account to the treasurer of the said royal hospital, or his deputy.

XXXVI. And be it further enacted, That after the balances shall have been so paid over to the treasurer of Greenwich Hospital, or his deputy, the said treasurer, or his deputy or deputies, and the clerk of the cheque of the said hospital, or his chief clerk, shall respectively keep an office open from nine of the clock in the morning to four of the clock in the afternoon, on every day in the week (Sundays excepted) for the purpose of receiving claims for shares to be refunded according to the provisions of this act; and shall jointly pay and refund such shares, when demanded, according to the regulations herein-after contained.

XXXVII. Provided always, and be it further enacted, That if any flag officer, or commissioned or warrant officer, shall direct by any order in writing that his distributive share or balance shall not be paid over to the treasurer of Greenwich Hospital, or his deputy or deputies, the same shall, for the space of three years, remain in the hands of the agent, subject to all such further orders as such officer may give respecting the same: Provided nevertheless, that if at the end of three years such share or balance shall not have been paid over to the officer entitled to the same, the agent shall pay the share or balance remaining in his hands to the treasurer of Greenwich Hospital, or his deputy or deputies.

XXXVIII. And be it further enacted, That no deduction shall be allowed on any account in the payments of unclaimed or forfeited shares and balances paid over to the treasurer of Greenwich Hospital, or his deputy or deputies, for any sums not appearing upon the prize list of distribution to have been thereon paid and acknowledged, unless satisfactory vouchers from the parties entitled thereto, or their lawful attorneys, are produced for the same.

XXXIX. And be it further enacted, That every agent, acting as such for any prize in any of his Majesty's settlements, colonies, or plantations abroad, or in any place out of the United Kingdom, shall make up his accounts, and deliver up and verify the same in the Vice-Admiralty Court in which such prize shall have been condemned, in such manner as the said Court shall require, within six months after the commencement of the distribution of the proceeds of such prize, and shall, under the direction of the Court, on the application of the deputy of the treasurer of Greenwich Hospital there resident, and in such manner as shall be specified in any order made for that purpose, remit all unclaimed balances and shares, and all shares of run-men, to the treasurer of Greenwich Hospital in England, or pay the same over to the deputy treasurer for the purpose of being remitted, at the election of the deputy, so as that the same, as to every place except the East Indies, may be paid to the said treasurer within six months, and as to any place in the East Indies, within twelve months next after exhibiting his accounts in such Court, in such manner as the said Court shall require, as aforesaid, on pain of forfeiting his bond of five thousand pounds.

XL. And be it further enacted, That lists of all prizes accounted for to the treasurer of Greenwich Hospital, condemned in the High Court of Admiralty,

Agents to transmit accounts to treasurer of Navy.

Treasurer, &c. of Greenwich Hospital to keep office open to receive claims for shares.

Officers may direct their shares to remain with agents for three years.

No deduction to be allowed on forfeited shares without vouchers.

Periods for remitting unclaimed shares from foreign parts.

Lists of prizes accounted for

to Greenwich Hospital to be, sent to persons appointed to receive claims, and to be open to inspection.

If capturing ship be absent, the treasurer of Greenwich Hospital may invest money.]

Notice to be put on orders for receiving prize money.

Altering orders for receiving prize money a misdemeanor.

Remedies and actions given to captors may be used by treasurer of Greenwich Hospital and treasurer of the Navy.

Directions as to powers of attorney for receiving prize money, &c.

Stamp duty on orders one shilling.

Orders under former act void, 43 G. 3. c. 160.

or in any Court of Vice-Admiralty, shall be transmitted six times in every year from the office of the clerk of the cheque at Greenwich Hospital, to the several persons appointed by the said treasurer of the said royal hospital, to receive applications and claims for prize and bounty monies, which lists so transmitted shall be open to inspection by any person or persons who shall desire to inspect the same, on every day, (Sunday excepted,) between the hours of ten and four, for which inspection no fee or gratuity whatever shall be due or payable.

XLII. And be it further enacted, That in every case in which any ship or vessel, ships or vessels, having made any capture or captures, shall not be in a port of this kingdom, or in the British or Irish or North Seas at the regular time of distribution, so as to enable the officers and men thereof to receive the same, it shall be lawful for the treasurer of the said hospital, or his deputy or deputies, to cause the proceeds of such capture or captures to be paid to him or them, within one month after the regular period of distribution, and when so paid to be forthwith lodged in the bank, or invested in exchequer bills or other public securities, in the names of the said treasurer, the secretary, and clerk of the cheque of the said royal hospital, till the return of the ship or ships by which the capture or captures shall have been made, for the benefit of the captors; and on the return of any such ship or ships to cause such proceeds, with all accumulations thereon, under the authority of the directors of the said royal hospital, to be distributed within three months thereafter: Provided always, that if any person or persons entitled to share in such prize and bounty monies, or other money, as aforesaid, by reason of any change of ship or other cause, shall apply for such his or their share or shares of any such prize or bounty money or other money as aforesaid, it shall be lawful for such treasurer, secretary, and clerk of the cheque, to sell out a sufficient part of any such securities, and pay to such person or persons the monies he or they shall be entitled to as aforesaid, or to pay the same out of any other monies in the hands of the said treasurer on account of prizes or otherwise, and to retain for the benefit of Greenwich Hospital such proportion as shall have been so paid, together with all interest thereon, when such securities shall afterwards be sold for distribution.

XLIII. And be it further enacted, That upon every order for receiving the prize or bounty money of a petty officer, seaman, non-commissioned officer of marines or marine, the following words shall be printed or written, before the same shall be attested; (*videlicet*),

“Take notice, that no prize or bounty money can be received under this order, except by an agent duly licensed, in conformity to the act of parliament of the fifty-fourth year of King George the Third, or by the wife, one of the parents, children, brothers or sisters of the grantors, and that every offence against the said provision of the above-recited act is punishable as a misdemeanor.”

XLIV. And be it further enacted, That if any person shall insert or cause to be inserted in any order or authority for receiving prize or bounty money, after attestation thereof as herein-before directed, the name or description of any prize or bounty money, other than what shall have been originally expressed in the said order or authority when the same shall have been attested, the said person shall, for every such offence, be deemed guilty of a misdemeanor, and be punished accordingly.

XLV. And be it further enacted, That all powers and remedies given by this act to, or that may by law be used or enforced, or actions that may be brought by any captor or captors to compel agents to exhibit their accounts, and verify the same, and bring in proceeds and enforce distribution, or the performance of any other duty in his said character as agent, or for the recovery of any penalty or penalties, may and shall be used, exercised, enforced, and put in execution on behalf of the captors generally, or on behalf of any individual captor, by the treasurer of Greenwich Hospital, or by the treasurer of the Navy, in as full and ample a manner as by the captors themselves, or any individual captor himself.

XLVI. [Repealed by 58 Geo. 3. c. 64.]

XLVII. [Repealed by 58 Geo. 3. c. 64.]

XLVIII. And whereas doubts have arisen, whether any orders or powers of attorney heretofore made and executed under the authority of an act passed in the forty-third year of his present Majesty, intituled “An Act for the Encouragement of Seamen, for the better and more effectual Manning His Majesty’s Navy; and for regulating the Payment of Prize Money, and for making Provisions for the Salaries of the Judges of the Vice-Admiralty Court in the Island of Malta, and in the Bermuda and Bahama Islands;” which act was by the said herein-before recited act of the forty-fifth year of his present Majesty, repealed, or under



the authority or in pursuance of other acts of parliament now repealed or altered, although made and executed while the said acts respectively remained in force, are now valid ; be it therefore enacted, That all such orders or powers of attorney, if made and executed prior to the passing of the said act of the forty-fifth year of the reign of his present Majesty herein-before recited, although made and executed pursuant to the laws in force at the time when the same were so made and executed, are and shall be and are hereby declared to be null and void, and of no effect whatever, save and except orders or powers of attorney made and executed pursuant to the laws in force at the time of their execution, by petty officers and seamen, non-commissioned officers and privates of marines, to persons standing in the relationship of either a wife or child, or father or mother, or grandfather or grandmother, or brother or sister, or uncle or aunt, or niece or nephew.

XLVIII. And be it further enacted, That it shall be lawful for the said treasurer of the said royal hospital for the time being, to nominate and appoint such person or persons, to be his deputy or deputies, for receiving applications and claims for prize and bounty monies, and for other the purposes of this act, at such port or places within the United Kingdom, as he shall from time to time think necessary, whose duty it shall be to prepare such petitions and applications, and transmit the same, together with the certificates, to the clerk of the cheque of the said hospital, in manner herein-after mentioned.

XLIX. And be it further enacted, That it shall and may be lawful for any person or persons claiming any share or shares, or balance or balances, of any prize or bounty monies paid into Greenwich Hospital, to apply to any such person so to be appointed by the said treasurer of the said royal hospital as aforesaid, and residing in any part of the United Kingdom, and upon producing to him such certificates of service in his Majesty's navy as such claimant or claimants may have in his, her, or their possession, to sign a petition or petitions, application or applications, to the directors of the said hospital, to be prepared by such person or persons in manner aforesaid, praying that such share or shares, balance or balances, may be paid or refunded to such claimant or claimants ; which petition or petitions, application or applications, together with the said certificates, shall be transmitted to the clerk of the cheque of the said hospital, who shall report thereon the sum or sums due to the claimant or claimants, with the circumstances under which the same was or were paid into the hospital ; and, if he shall deem it necessary, refer the said petition or application, petitions or applications, to the Navy Office, that the service of the claimant or claimants may be ascertained, and returned to the said clerk of the cheque of the said royal hospital, or his chief clerk, who, if such service shall be found to correspond with the certificates produced and transmitted, or statement made by the person or persons claiming such prize or bounty monies, shall certify the same to the said treasurer of the said royal hospital, or his deputy, who shall thereupon send a remittance bill or remittance bills for the amount, in the manner and form herein-after mentioned, or shall pay or remit the same in such other manner as the said treasurer of the said royal hospital, or his deputy, and the clerk of the cheque, or his chief clerk, shall from time to time judge more expedient.

L. And be it further enacted, That it shall be lawful for every person claiming any share or balance of prize or bounty money paid into Greenwich Hospital, and residing and being in any port or place of the United Kingdom at which there shall be no such deputy to the said treasurer of the said royal hospital for the purposes last aforesaid, to apply for such share or balance by letter or otherwise, to the treasurer or clerk of the cheque at the said royal hospital, and such claimant or claimants shall thereupon, if necessary, be furnished by such treasurer or clerk of the cheque with blank petitions and forms, to be filled up and attested by the minister, churchwardens, or elders of the parish in which such claimant or claimants shall reside ; which petitions, when filled up, shall be transmitted to the clerk of the cheque of the said royal hospital, together with any certificate of the service of such claimant or claimants in the navy, which such claimant or claimants may have in his or their possession ; and when the same shall have been returned from the Navy Office upon such attestation and certificate (in case the clerk of the cheque shall judge it necessary to refer them to that office), and a certificate shall have been obtained from the Navy Office of the service of such claimant or claimants, corresponding with the certificates which shall have been produced by him or them as aforesaid, such share or balance, shares or balances, shall be forthwith paid to such claimant or claimants, on application at the proper office at Greenwich Hospital ; or if from distance of residence, or any other cause, such claimant or claimants shall not be able conveniently to attend at the

except in certain cases.

Treasurer of Greenwich Hospital may appoint deputies to receive claims, &c.

Directions as to claims to be made for shares paid to Greenwich Hospital.

Directions as to such claims made where there is no deputy of the treasurer.

Directions for  
facilitating the  
payment of  
prize money  
by Greenwich  
Hospital, and  
for preventing  
frauds therein.

said royal hospital to demand the same, a remittance bill, in the form or to the effect herein-after set forth, and in manner herein-after mentioned, shall be forwarded and sent for the amount of such share or balance, shares or balances, or the same shall be remitted to or for the use of such claimant, in such other manner as the said treasurer or his deputy, and the clerk of the cheque, or his chief clerk, shall from time to time judge more expedient.

L.I. And, in order to facilitate the payment of prize and bounty monies by the treasurer of the said royal hospital to officers, seamen, marines, soldiers, and others entitled thereto, who may be serving in his Majesty's navy, or who may be resident in any part of the United Kingdom distant from the said royal hospital, and for preventing frauds and abuses attending the same; be it enacted, That it shall and may be lawful to and for the said treasurer of the said royal hospital, or his deputy, and they are hereby respectively authorized and required, as often as there shall be occasion, to make out or cause to be made out two bills for every sum of money which they shall have occasion to pay to any person of the description last herein-before mentioned; which bills shall be duplicates, and joined together with oblique lines, flourishes, or devices, in such manner as the said treasurer or his deputy shall think proper, and shall be payable to such person by the receiver general of the land tax for any county, riding, or city, within the United Kingdom, collector of the customs for any port, or collector of excise for any collection in the United Kingdom respectively, near which such person shall happen to reside, according to the appointment of such bills; and the said bills, being numbered and dated, shall be signed by the said treasurer or his deputy, and attested by the clerk of the cheque of the said royal hospital, or his chief clerk, and be written or printed according to the following form, or such other form as the said treasurer and clerk of the cheque of the said hospital shall from time to time deem more convenient and proper.

Form of bills to  
be made by  
Greenwich  
Hospital for  
payment of  
prize money.

" Sir,  
" Pay to \_\_\_\_\_ of \_\_\_\_\_  
" Royal Hospital, Greenwich.  
in the county of \_\_\_\_\_  
upon producing the duplicate hereof, together with a certificate under the hands of the captain and one other signing officer of the ship to which such belongs, (in case he is in his Majesty's naval service,) or of the minister and churchwardens [or, *in that part of the United Kingdom of Great Britain and Ireland called Scotland, under the hands of the minister and two elders*] of the parish where he resides, (in case he is not in such naval service), that to the best of their knowledge and belief he is the person named in such bill, the sum of \_\_\_\_\_ sterling, being on account of monies due to the said \_\_\_\_\_, for captures made by his Majesty's ship \_\_\_\_\_, if the same shall be demanded within six calendar months from the date hereof, otherwise you are to return this bill to the treasurer of the said royal hospital.

" Attested

} Treasurer or his  
deputy.  
} Clerk of the Cheque  
of the said hospital,  
or his chief clerk.

" To the Receiver General of the Land

Tax of the county of \_\_\_\_\_

" To the Collector of the Customs of  
the port of \_\_\_\_\_

" To the Collector of Excise at \_\_\_\_\_

" N. B. The personating or falsely assuming the name and character of any person entitled or supposed to be entitled to prize money, for services performed in his Majesty's navy, in order to receive the same, is felony without benefit of clergy."

And as soon as the said bills shall be so made out and signed, the said treasurer of the said royal hospital, or his deputy, shall cause them to be cut asunder indentwise, through the oblique lines, flourishes, or devices aforesaid, and shall cause one of the said bills to be transmitted forthwith to the person nominated and appointed as the payee in such bills, and the other of the said bills shall be transmitted forthwith to the said receiver general of the land tax, collector of the customs, or collector of the excise, on whom such bills shall be so drawn as aforesaid; and the said receiver general of the land tax, collector of the customs, or collector of excise, if the said bills shall be produced and delivered to either of them respectively within six months, if in Great Britain, and if in Ireland, then within nine months from the date thereof, are hereby required and enjoined to

examine such duplicate, together with the certificate to be produced as aforesaid, and to enquire into the truth thereof by the oath of the person producing the same, or, such person being a Quaker, by the solemn affirmation of such person, (which oath or affirmation they are hereby respectively authorized and required to administer), and upon being duly satisfied of the truth of such certificate, to testify the same on the back of such bill, and immediately to pay to such person, without fee or reward, on any pretence whatsoever, the sum directed to be paid by such bill, taking his receipt for the same on the back thereof; but in case the duplicate of such bill shall not be produced and delivered, and the payment thereof be demanded within six or nine calendar months from the date, as the case may be as aforesaid, or if a proper certificate of the person claiming such prize or bounty money be not likewise produced, then the said receiver general, collector of the customs, or collector of the excise, shall return such bill to the treasurer of the said royal hospital, or his deputy, who shall cause such bill to be cancelled, and from and after the cancelling of the same, such prize and bounty money shall remain payable in like manner as if the said bill had not been made out; all which said bills and receipts to be so made and given as aforesaid, and also all other receipts for prize and bounty money, which shall be at any time paid and refunded by the said treasurer of the said royal hospital, or his deputy, to any person or persons whomsoever, shall be free and exempt from and not liable to any duty of stamps whatsoever; any law or statute to the contrary thereof notwithstanding.

LII. And be it further enacted, That all such remittance bills which shall be drawn upon and paid by the receiver general of the land tax for any county, riding, or city, collector of the customs for any port, or collector of excise for any collection in the United Kingdom, upon being produced and delivered at the office of the treasurer of the said royal hospital, shall be immediately repaid by such treasurer or his deputy to such receiver general of the land tax, collector of the customs, or collector of excise, or to their respective orders.

LIII. Provided always, and be it hereby further enacted, That if any such receiver general, collector of the customs, or collector of the excise, to whom the duplicate of any of the bills herein-before directed to be made out shall be tendered for payment, shall not then have in his hands public money sufficient to answer the same, and shall therefore refuse or delay the immediate payment thereof, such receiver general, collector of the customs, or collector of the excise, shall immediately indorse on the back of the said duplicate the day of its being so tendered to him, and the cause of his refusal or delay to pay the same; and in such case the said receiver general or collector shall forthwith transmit the said duplicate, with his certificate of non-payment thereon, to the clerk of the cheque of the royal hospital at Greenwich, who shall take such steps as may be necessary for remitting the amount of the duplicate to the person entitled to receive the same; and if, upon complaint made to the respective commissioners appointed by his Majesty, his heirs or successors, to manage the said several duties of the land tax, customs, or excise, it shall appear that such receiver general, collector of customs, or collector of excise, hath unnecessarily and wilfully refused or delayed the payment of such bill, it shall and may be lawful to and for any three or more of the said commissioners to convict and fine any such offender, under their respective direction, in any sum not exceeding fifty pounds, according to the nature or degree of the offence, which conviction shall be made by the said respective commissioners; and such fine shall be levied and recovered in such and the same manner, to all intents and purposes, as any conviction may be made, and any penalty may be levied or recovered for any offence against any law by which any customs or excise is imposed or laid; and the said fine, when levied, shall be paid to the informer or informers against such offender.

LIV. And be it further enacted, That no person paying any share or balance of prize money refunded by Greenwich Hospital shall receive any fee, gratuity, or reward, from or on account of any payment thereof, or of any act, matter, or thing done, relating to the procuring or paying the same to any claimant, or any person on his behalf, under any pretence whatever, on pain of forfeiting, for every such offence, one hundred pounds.

LV. And be it further enacted, That in all cases in which any claim of prize or bounty money shall be made upon any prize agent or prize agents, accompanied with a requisition in writing from the clerk of the cheque of the said royal hospital, or the officer for prizes in the Navy Pay Office, in the form in the schedule to this act annexed, marked (C), requiring that such claim may be either satisfied, or a reason assigned for its disallowance, such prize agent or prize agents shall either pay the same, or state in writing under his or their hand or hands the

Treasurer of Greenwich Hospital to repay remittance bills.

Directions if receiver general, &c. have not money to answer bills.

Penalty on refusal or delay of payment.

No fee, &c. to be taken on payments of Greenwich Hospital.

Agents to answer claims of prize money made by Greenwich Hospital or Navy Pay Office.

reason of his or their refusing to do so, and deliver the same to the party claiming the same, and presenting such requisition ; and if the reason assigned be, that such claim has been already satisfied, the said agent or agents shall specify the name and place of abode of the person or persons by whom the amount thereof was received, and under what authority, from the claimant or claimants, and at what time or times the same was paid ; and if any such agent or agents refusing payment of any such prize or bounty money, shall omit, at the time of such claim being made, accompanied by such requisition as aforesaid, or within two days afterwards, to give and subscribe such information as to the cause of not satisfying such claim, he or they shall forfeit and pay to such claimant or claimants double the amount of the sum so claimed, to be recovered by him, her, or them, with full costs of suit in an action of debt, wherein it shall be sufficient for the plaintiff or plaintiffs to declare against the defendant or defendants for so much money had and received by him or them to and for the use of such plaintiff or plaintiffs ; and that proof of such claim, and of the service of such requisition as is herein-before mentioned, upon such agent or agents, shall be and be deemed sufficient evidence in support of any such action ; any law, statute, or usage to the contrary in anywise notwithstanding.

None but  
licensed persons  
to receive  
wages, prize  
money, &c.

Exceptions.

Fraud in re-  
ceiving prize  
money, &c.  
misemeanor.

Directions as to  
licences for re-  
ceiving wages,  
prize money,  
&c.

In part re-  
pealed by 59  
G. 3. c. 56.

LVI. And whereas it has frequently happened, that frauds have been practised upon petty officers and seamen in the navy, and on non-commissioned officers of marines, and marines, by persons of bad character, who have been authorised by them to receive wages, pay, prize money, and bounty money, or money in the nature of bounty money, to which they were entitled ; be it therefore enacted, That it shall not be lawful for any person within the the United Kingdom, to receive any wages, pay, prize money, or bounty money, or money in the nature of bounty money, due or to become due to any petty officer, seaman, non-commissioned officer of marines, or marine, for or on account of his services respectively on board any of his Majesty's ships, or in the capture of any fortress upon the land, or any arms, ammunition, stores of war, goods, merchandize, or treasure, on any conjunct expedition of sea and land forces, under any such orders as herein-before mentioned, other than persons who shall be duly licensed in the manner herein-after mentioned for that purpose : Provided always, that nothing herein contained shall extend or be construed to extend to prevent any such petty officers, non-commissioned officers, seamen, soldiers, or marines from giving such orders to receive their wages, pay, prize money, or bounty money to their wives, or to the persons in the several degrees of relationship following ; that is to say, parents, children, brothers or sisters of such petty officers, seamen, marines, and soldiers ; any thing herein-before contained to the contrary thereof in anywise notwithstanding.

LVII. And be it further enacted, That any person who shall falsely represent himself or herself to be within any of the degrees of relationship in blood as before described, in order to enable himself or herself to receive any prize money or bounty money, or share of prize money or bounty money due or to grow due for or on account of the services of any such petty officer, non-commissioned officer, seaman, or marine, under any such order as aforesaid, or who, not being within any such degree of relationship, and not being licensed as aforesaid, shall receive any wages, pay, prize money, bounty money, or other allowances of money for the use of any such petty officer, non-commissioned officer, seaman, or marine ; or if any agent or person whose licence shall have been revoked as herein-after mentioned, shall offer himself to receive, or shall receive any such wages, pay, prize money, bounty money, or other allowance of money, not being within any of the degrees of relationship aforesaid, and be thereof duly convicted, shall be deemed guilty of a misdemeanor.

LVIII. And be it further enacted, That every person, not being a prize agent, and having given security as such, according to the provisions of this act, before he shall act as an agent for receiving the wages, pay, prize money, bounty money, or other allowances of money of any such petty officers, non-commissioned officers, seamen, or marines, shall take out a licence for that purpose from the treasurer of his Majesty's navy for the time being, who is hereby authorized and empowered to grant the same, on good and sufficient security (to be approved of by the said treasurer) being given by bond to his Majesty, his heirs and successors, in the penalty of three hundred pounds, that such person so taking out such licence shall demean himself properly, and duly account to all persons for whom or for whose use any such wages, pay, prize money, or bounty money, shall have come to his hands, and for which licence the sum of twenty shillings, and no more, over and above any stamp duties that may be due and payable thereon, shall be paid by the person taking out the same, to the officer

of prizes in the office of the treasurer of the Navy, who shall pay over the amount thereof to the paymaster of incidents in the said office, towards the incidental expenses therein incurred; which licence shall be in force for the space of three years from the date thereof.

LIX. Provided always, and be it further enacted, That if after the taking out of any such licence, it shall appear to the treasurer of his Majesty's Navy for the time being, that any such licensed agent hath abused the trust reposed in him by not duly accounting to any person or persons by whom he shall have been empowered to receive any such wages, pay, prize money, bounty money, or other allowances of money as aforesaid, for the sum or sums of money by him received in that behalf, or by practising any fraud or imposition on any such person or persons, then and in that case it shall and may be lawful for the said treasurer, by any writing under his hand to be delivered to such licensed agent, or left at his last or most usual place of abode, or place where his business of agency shall be carried on, to revoke the licence so to be granted or taken out as aforesaid; which revocation, if such agent's place of transacting agency business shall be in London, or within the bills of mortality, shall be published in the London Gazette, and if in the country or out of the said bills of mortality, also in some public newspaper in circulation at or near to the place where such agent shall transact his business of agency, for the information of all persons interested in wages, or prize money; and thenceforth the power and authority of such agent to demand and receive wages, pay, prize money, bounty money, and other allowances of money due or to grow due on account of the services of any such petty officers, non-commissioned officers, seamen, or marines, shall absolutely cease and determine.

Licence may be revoked.

LX. And be it further enacted, That the names and places of abode and of transacting agency business of every such licensed agent, shall be inserted in a list, and hung up in the hall of the Navy Pay Office in Somerset Place, and in some conspicuous place in each of the Navy Pay Offices at the several outports of the United Kingdom, for the inspection of all persons who shall resort thither on business, and which lists shall be renewed from time to time as occasion may require.

Lists of licensed agents to be hung up.

LXI. And be it further enacted, That as often as any such licensed agent shall remove or change his office or place of conducting the business of agency, he shall, within fourteen days after every such removal or change of place, give notice thereof in writing to the treasurer of his Majesty's Navy for the time being, on pain of forfeiting for every neglect thereof the sum of fifty pounds.

Licensed agents to give notice in case of removal on penalty of 50*l*.

LXII. And be it further enacted, That all letters or packets addressed to the said treasurer or clerk of the cheque of the said royal hospital for the time being, upon any business or affairs relative to prize matters, or upon any other business or affairs of the said royal hospital, shall, from and after the passing of this act, be free from the duty of postage; and also that all letters or packets sent by the said treasurer, or by the clerk of the cheque of the said royal hospital for the time being, upon such business or affairs as aforesaid, or by the officer for prize matters in the Navy Pay Office, upon any business relating to such prize matters in manner and form herein-after directed, shall be sent free from the said duty of postage; and all letters and packets relating to the matters aforesaid, that shall be forwarded by the said treasurer or clerk of the cheque, or by such officer for the prize matters in the Navy Pay Office as aforesaid, shall be under cover, with the words "pursuant to act of parliament, fifty-four George the Third," printed upon the same; and the said treasurer or clerk of the cheque of the said royal hospital, or officer for prize matters in the Navy Pay Office, as the case may be, shall write his name under the same; and they and each of them are and is hereby strictly prohibited from inclosing or sending under such covers any writing, paper, or parcel whatsoever, excepting such as relate to the business or affairs of the said royal hospital, or to such prize matters respectively.

Letters of Greenwich Hospital on prize matters to be free of postage.

LXIII. And be it further enacted, That if any such treasurer or clerk of the cheque, or officer for prize matters as aforesaid, shall send or convey under any of the covers aforesaid, any writing, paper, or parcel, other than those relating to the business or affairs of the said royal hospital, or such prize matters as aforesaid, the person so offending shall for every such offence forfeit and pay the sum of one hundred pounds.

Penalty on sending other papers, &c. under free covers, &c. 100*l*.

LXIV. And be it further enacted, That all captains and commanders of his Majesty's ships and vessels of war, or hired armed ships, shall from time to time, as soon as the same can be done, transmit to the treasurer of the Navy, and to the clerk of the cheque of the said hospital, accounts in writing of all

Officers to send accounts of captures to treasurer of

Navy and  
Greenwich  
Hospital.

Payment to  
representatives  
of seamen.

Expenses of  
executing this  
act, &c. to be  
paid out of  
interest or prin-  
cipal of un-  
claimed shares.

No fees to be  
paid for tracing  
services of per-  
sons claiming  
shares, &c.

No person em-  
ployed by  
Greenwich  
Hospital, to  
act as prize  
agent.

Punishment of  
persons guilty  
of perjury, &c.

Penalty on per-  
sons counter-  
feiting any  
commission for  
war, &c. 500*l*.

Penalty on not  
delivering ac-  
counts, 100*l*.

Penalty on  
frauds in ac-  
counts, 500*l*.

Proceeds of  
captures before  
1st Jan. 1805,  
to be dis-  
tributed accord-  
ing to this act,  
and agents to  
account, &c.  
accordingly.

prizes taken, with the name of the port to which the capture was sent, with the name and place of abode of the agent or agents, stating whether it is a sole or joint capture, and if joint, the names of the several ships alleged to be aiding in such capture, with the date of the capture, and the place where the same was made.

LXV. And be it further enacted, That the prize and bounty money due to the representatives of petty officers, seamen, and marines deceased, shall be paid only to their representatives, or their lawful attorney or attorneys, upon production of the cheque to be granted by the inspectors of seamen's wills.

LXVI. And be it further enacted, That the expenses incurred in executing this act, and the sums paid in remunerating the officers of the Navy Office, Navy Pay Office, or of Greenwich Hospital, for their care, pains, and trouble in executing the regulations thereof, shall be subject to the discretion of the Commissioners of the Navy, as far as the same relate to officers of or persons employed in the Navy Office, or otherwise under the orders of such commissioners of the treasurer of the Navy, as far as the same relate to officers of or persons employed in the Navy Pay Office, and of the board of directors of the said hospital, as to all officers and persons employed or belonging to Greenwich Hospital, and shall be paid by the said board of directors out of the interest of unclaimed shares, and shares of run-men, invested in government securities, or if necessary, out of the principal sums in the hands of the treasurer of the said hospital, on account of such shares of run-men, the accounts of such remunerations and expenditures being annually returned to parliament; and the Commissioners of the Navy, and the treasurer of the Navy respectively, shall quarterly cause an account to be sent of the amount of such expenses to the said board of directors of the said royal hospital, who shall immediately cause the same to be paid to the order of the said commissioners and treasurer respectively.

LXVII. Provided always, and it is hereby declared and enacted, That from and after the passing of this act all fees heretofore paid by the said royal hospital at the Navy Office, for tracing the services of persons claiming shares of prize or bounty money, shall cease and be no longer due or payable.

LXVIII. And be it further enacted, That no person employed by Greenwich Hospital in executing the regulations of this act, shall act as an agent for prizes, or be concerned directly or indirectly in the business thereof, under the penalty of five hundred pounds.

LXIX. And be it further enacted, That if any person or persons shall falsely make oath to any of the matters herein-before required to be verified on oath, or suborn any other person so to do, such person or persons shall suffer the like pains and penalties as are incurred by persons committing wilful and corrupt perjury; and that if any person or persons shall counterfeit, erase, alter, or falsify any commission for war or letter of marque, or any warrant for making out the same, or any certificate required or directed by this act to be given for obtaining the same, or shall publish or make use of any such commission for war, or warrant for making out the same, or any certificate as aforesaid, knowing the same to be counterfeited, erased, altered, or falsified, such person or persons shall for every such offence forfeit the sum of five hundred pounds.

LXX. And be it further enacted, That all and every person and persons hereby directed to transmit or deliver all or any of the accounts before mentioned; who shall refuse or neglect to transmit or deliver all or any such account or accounts to the treasurer of the said hospital, or his said deputy or agent, within the time before limited and appointed, in manner and form as herein-before mentioned, shall for every such offence forfeit the sum of one hundred pounds, and shall pay the expense of any application to any court to compel the production and delivery of the same.

LXXI. And be it further enacted, That if any fraud, collusion, or deceit shall be wittingly or willingly made, used, committed, permitted, or done or suffered in making, stating, or balancing such accounts, then every person or persons who shall be thereof duly convicted, and his and their aiders and abettors, shall forfeit and pay for every such offence, the sum of five hundred pounds.

LXXII. And be it further enacted, That from and after the passing of this act, the proceeds of all captures made prior to the first day of January one thousand eight hundred and five, in this or any former war, which shall not have been already advertised for distribution, shall be distributed under the regulations of this act, and the forfeited and unclaimed shares be accounted for and paid to the treasurer of Greenwich Hospital within the same period, and in like manner as by this act is directed; and that the agents for all captures made previous to the first day of January one thousand eight hundred and five, in this or any former

war, and which have already been advertised for distribution, shall render accounts, and pay the forfeited and unclaimed shares to the said treasurer of Greenwich Hospital within three months after the passing of this act, any thing in any former act contained to the contrary in anywise notwithstanding.

LXXIII. And whereas divers sums of money are now remaining in the hands of the registrars of the High Court of Appeals, High Court of Admiralty, and of the several Courts of Vice-Admiralty respectively, arising from [prizes which have been finally adjudged to the captors, and which have not been claimed by them, or any person or persons on their behalf; be it therefore enacted, That the registrars of the said High Court of Appeals, of the High Court of Admiralty, and of every Court of Vice-Admiralty in his Majesty's dominions, shall, within three months, so far as relates to the High Court of Appeals and the High Court of Admiralty, and with respect to Courts of Vice-Admiralty in the East Indies, within two years, and with respect to such Courts in any other parts of his Majesty's dominions, within one year next after the passing of this act, render or transmit to the treasurer of the said royal hospital at Greenwich, or his deputy, an account of all sums of money which had been paid into the said Courts as aforesaid respectively, up to the first day of January one thousand eight hundred and twelve, and which at the time of rendering such account shall remain in their hands respectively; and at the same time pay over or remit to the said treasurer of the said royal hospital all such last-mentioned sums of money; and that the receipt of the said treasurer of the said royal hospital, or his deputy, to the registrar paying such money, shall be a good and effectual discharge to such registrar, to all intents and purposes whatsoever; and with respect to all monies which have been so paid to the said registrars respectively, since the first day of January one thousand eight hundred and twelve, or which shall hereafter be so paid, and which shall have remained in their hands respectively for the space of twelve calendar months after the prize or prizes, from which such monies shall have proceeded, shall have been finally adjudged to the captors, unclaimed by the said captors, or by any person or persons on their behalf, it shall be lawful for the judge or judges of the said Courts respectively, upon application by the treasurer of the said royal hospital, or his deputy, to order payment thereof to the said treasurer or his deputy; which several sums, when so paid to the said treasurer or his deputy as aforesaid, shall be distributed among the captors, or their legal representatives, by the treasurer and clerk of the cheque of the said hospital, in like manner, and subject to the same regulations, so far as the same can be made applicable, as in cases of distribution by the agents of the captors.

Registrars to send account to Greenwich Hospital of money in their hands.

And to remit.

Judges to order payment of unclaimed money which is to be distributed.

LXXIV. And be it further enacted, That it shall be lawful for the treasurer and clerk of the cheque of the said royal hospital, from time to time as they shall see occasion, to issue precepts under their hands, directed to such person or persons as shall be licensed as herein-before mentioned, and whom they may have reason to believe have received prize or bounty monies upon orders executed since the passing of this act, requiring him or them, within two calendar months next after the time at which such precept shall have been served, to deliver or transmit upon oath to the said treasurer and clerk of the cheque of the said royal hospital, according to the directions contained in the said precept, (which oath any justice of the peace or magistrate, or the treasurer or deputy treasurer of the said royal hospital for the time being, is hereby authorised to administer) an account of all monies which may have been received by such person or persons upon orders executed since the passing of this act; and in case the same, or any part thereof, shall have been paid over, then to whom the same, or any part thereof, has been so paid over as aforesaid, and shall at the same time pay or remit to the treasurer or deputy treasurer of the said royal hospital, as may be required by such precept, such part of the said monies as shall remain in his or their hands unpaid, to the parties beneficially entitled to it, or to their use; and in case such monies shall not be paid over or remitted to the said treasurer or deputy treasurer within the time limited by this act, the same shall be recoverable from the person detaining the same, by action for money had and received, or otherwise in the name of the commissioners and governors of the said royal hospital, and the same, when so paid in or recovered, shall be for the use of the parties beneficially entitled thereto, and be otherwise applied as forfeited and unclaimed shares of prize and bounty monies are by this act directed to be applied; and in case any such person or persons upon whom any such precept shall be served as aforesaid, shall neglect or refuse to deliver or transmit such account within the time hereby limited, he or they shall for every such offence forfeit and pay to the use of the said royal hospital the sum of twenty pounds,

Treasurer and clerk of the cheque may issue precepts to licensed persons to account for prize or bounty monies.

Precepts on such persons may be repeated, &c.

Registrars of Courts of Appeal and Admiralty to transmit lists to the treasurer of Greenwich Hospital.

Registrars of Vice-Admiralty Courts to transmit lists to the registrar of the High Court of Admiralty and treasurer of Greenwich Hospital quarterly.

Lists to be hung up for public inspection.

Penalty of 50*l*. if registrars neglect.

Penalty of 50*l*. on registrar for neglecting to make returns of prizes.

Treasurer of the Navy may appoint a person to examine accounts of prizes.

Such person to give certificates of accounts allowed.

to be recovered by action of debt, to be brought in the name of the said commissioners and governors of the said royal hospital, in either of his Majesty's Courts of Record at Westminster, unless sufficient cause shall be shown to the satisfaction of the board of directors of the said royal hospital, why such precepts have not been complied with.

LXXXV. And be it further enacted, That in case any such person or persons as aforesaid, upon whom any such precept or precepts as aforesaid shall have been served, shall neglect or refuse to pay obedience thereto, and shall in consequence thereof pay the penalty incurred by such disobedience, it shall nevertheless be lawful for the said treasurer and clerk of the cheque of the said royal hospital, and they are hereby empowered to repeat such precept or precepts until the accounts thereby required shall have been duly rendered and delivered; and such person or persons shall be, and is and are hereby declared to be, liable to a separate penalty of twenty pounds, for every precept to be served upon him or them, to which due obedience shall not be paid, to be recovered in manner aforesaid.

LXXXVI. And be it further enacted, That the registrars of the High Court of Appeals and High Court of Admiralty respectively, shall, on the twenty-sixth day of March, the twenty-fifth day of June, the thirtieth day of September, and the twenty-sixth day of December in every year, transmit to the treasurer of the said royal hospital, or his deputy, and to the treasurer of the Navy, a list of all the prizes which shall have been adjudged in their courts respectively, in the three months preceding, together with the names of the capturing ships and their commanders, and of the agents for the captors, and the dates of the captures and sentences respectively.

LXXXVII. And be it further enacted, That the registrars of every Vice-Admiralty Court shall, on the twenty-sixth day of March, and the twenty-fifth day of June, the thirtieth day of September and the twenty-sixth day of December in every year, or so soon after each of such quarter days respectively as any ship shall sail for England, transmit to the registrar of the High Court of Admiralty, and the treasurer of the royal hospital at Greenwich, a list of all the prizes which have been adjudged in their courts respectively during the preceding quarter of a year, together with the dates of the several captures, as far as the same may appear, the names of the capturing ships and their commanders, the agents of the captors, a copy of the decretal part of the sentences upon the same; and at the same time deliver, or cause to be delivered, a duplicate of the same to the deputy of the said treasurer, resident at the place where such Courts of Vice-Admiralty are or shall be established, or to which their jurisdiction shall extend; which lists so to be transmitted to the registrar of the High Court of Admiralty, shall be hung up for public inspection in the registry at Doctors' Commons, together with similar lists of the prizes adjudged in the High Court of Admiralty, and in the Court of Appeal; and in case any such registrar of any Vice-Admiralty Court shall neglect or refuse to transmit such lists, or to deliver duplicates thereof, at the times and in the manner aforesaid, every person so offending shall, for every such offence, forfeit and pay the sum of fifty pounds.

LXXXVIII. And be it further enacted, That in all cases where the registrar of any Vice-Admiralty Court shall have neglected to make the returns of prizes proceeded against in the respective Courts as required by law, he shall for every such offence forfeit and pay a like sum of fifty pounds, unless the returns shall be transmitted in manner above required within eighteen months, so far as the same relate to the East Indies, and within nine months from every other Vice-Admiralty Court in his Majesty's foreign dominions.

LXXXIX. And whereas it is expedient that provision should be made for the speedy and effectual examination of all accounts relating to prizes taken by his Majesty's ships, in order to ensure the full value thereof being duly accounted for to the captors; be it enacted, That from and after the passing of this act, it shall and may be lawful for the treasurer of the Navy to appoint a person duly qualified to examine all such accounts, and that every prize agent and every person who shall be authorized and empowered to receive and distribute any bounty monies or other monies for the use or benefit of the officers and crews of any of his Majesty's ships of war, by reason of any capture or seizure made by them, subject to the provisions of this act, shall, before he shall exhibit his account of sales in the High Court of Admiralty, transmit a copy thereof to the treasurer of the Navy, in order to the same being submitted to the immediate examination of the officer so to be appointed by him.

LXXX. And be it further enacted, That when the person so to be appointed shall have carefully examined the accounts of any prize agent or other person so



transmitted to him, and shall be satisfied therewith, he shall give to such agent or other person two certificates signed by himself, setting forth the names of the prize and of the capturing ship or ships, and the amount of the nett proceeds for distribution, one of which certificates such agent or other person shall transmit to the treasurer of Greenwich Hospital, together with a copy of his accounts and vouchers exhibited in the High Court of Admiralty.

LXXXI. And be it further enacted, That when such agent or other person shall deliver his accounts for examination as aforesaid, he shall at the same time deliver a scheme for the distribution of the nett proceeds to the captors of the prize in question, according to the following forms:

Such person to deliver a scheme for distribution.

For all captures made prior to June, 1808.

| Ships, &c.<br>entitled to share. | Names of<br>distributing<br>agents for each<br>ship, &c. | Number of persons in each class, with the amount of an<br>individual share. |                           |                             |                            |                            | Proportion<br>due to each ship. |
|----------------------------------|--|---|---------------------------|-----------------------------|----------------------------|----------------------------|---------------------------------|
|                                  |  | 1st class, each<br>£73 12 3   | 2d class, each<br>£10 0 9 | 3d class, each<br>£3 18 10½ | 4th class, each<br>£1 17 5 | 5th class, each<br>£0 8 4½ |                                 |
| Ship No. 1.                      | A. & B.  | 1   | 4                         | 9                           | 22                         | 232                        | £ s. d.<br>287 15 11½           |
| 2.                               | C. & D.  | 1   | 4                         | 11                          | 24                         | 213                        | 291 9 0½                        |
| 3.                               | E. & F.  | 1   | 3                         | 8                           | 13                         | 80                         | 193 3 5                         |
|                                  | G. & H.  |   |                           |                             |                            |                            | 110 8 4½                        |
|                                  |  |   |                           | Flag Proportions            |                            |                            | — 10 2½                         |
|                                  |  |   |                           | Fractions                   |                            |                            | 883 7 0                         |

For all captures made subsequent to June, 1808.

| Ships, &c.<br>entitled to share. | Names of<br>distributing<br>agents for each<br>ship. | Number of persons in each class, with the amount of an individual<br>share. |                            |                            |                            |                           |                            |                           |                           | Proportion<br>due to each ship. |
|----------------------------------|--|---|----------------------------|----------------------------|----------------------------|---------------------------|----------------------------|---------------------------|---------------------------|---------------------------------|
|                                  |  | 1st class, each<br>£51 15 3½  | 2d class, each<br>£8 13 3½ | 3d class, each<br>£3 1 10½ | 4th class, each<br>£1 16 0 | 5th class, each<br>£1 4 0 | 6th class, each<br>£0 12 0 | 7th class, each<br>£0 8 0 | 8th class, each<br>£0 4 0 |                                 |
| Ship No. 1.                      | A. & B.  | 1   | 7                          | 10                         | 41                         | 13                        | 253                        | 83                        | 29                        | £ s. d.<br>449 11 1½            |
| 2.                               | C. & D.  | 1   | 3                          | 7                          | 10                         | 6                         | 54                         | 14                        | 12                        | 185 16 3½                       |
|                                  | E. & F.  |   |                            |                            |                            |                           |                            |                           |                           | 57 15 3½                        |
|                                  |  |   |                            |                            |                            | Flag Proportions -        |                            |                           |                           | — 1 2½                          |
|                                  |  |   |                            |                            |                            | Fractions                 |                            |                           |                           | 693 3 11                        |

LXXXII. And be it further enacted, That an allowance or payment shall be made for such examination by the agent or person delivering such accounts; and the sum so paid shall be charged, by the said agent or other person in his account for distribution; the said allowance or fee to be regulated after the following proportions: if the nett proceeds for distribution amount to

Allowance for such examination.

| Pounds.           | Pounds. | Guineas. |
|-------------------|---------|----------|
| 200 and are under | 500     | - 2      |
| 500 -             | 1000    | - 3      |
| 1000 -            | 2000    | - 4      |
| 2000 -            | 3000    | - 5      |
| 3000 -            | 4000    | - 6      |
| 4000 -            | 5000    | - 7      |
| 5000 -            | 6000    | - 8      |

| Pounds.            |   | Pounds. |   | Guineas. |
|--------------------|---|---------|---|----------|
| 6000               | - | 7000    | - | - 9      |
| 7000               | - | 8000    | - | - 10     |
| 8000               | - | 9000    | - | - 11     |
| 9000               | - | 10,000  | - | - 12     |
| 10,000             | - | 15,000  | - | - 13     |
| 15,000 and upwards | - | -       | - | - 15     |

Sums recovered in consequence of examination to be distributed, &c.

LXXXIII. And be it further enacted, That if, upon the examination of any account as aforesaid so exhibited, it shall appear that the full value of any prize taken, or bounty, has not been stated in the account made up by the agent for distribution, or if upon such examination any sum or sums shall be disallowed as improperly charged against the captors, then all further sums so appearing to be due to the captors, and recovered by the authority of any competent Court, shall be considered as a part of the proceeds to be distributed among the captors; and if by any delay in recovering the same, such sum or sums cannot be included in the first distribution, then the said sum or sums shall be paid to the treasurer of Greenwich Hospital or his deputy, to be distributed to the captors or their legal representatives by the treasurer and clerk of the cheque of the said hospital, in like manner and subject to the same regulations as far as the same can be made applicable thereto, as in cases of distribution by the agents of the captors.

Account of money received for such examination to be rendered.

LXXXIV. And be it further enacted, That an attested account shall be annually rendered to the treasurer of the Navy and treasurer of the royal hospital at Greenwich, by such examiner of prize accounts of all sums of money received as allowance or payment for examination as aforesaid, and that out of the same shall be paid all charges incurred in carrying into effect the provisions of this act with respect to the examining of prize accounts, together with such remuneration for the examiner of the said accounts as shall by the treasurer of the Navy be thought reasonable; and whatever balance shall remain after satisfying such charges as aforesaid, the same shall be paid to the treasurer of Greenwich Hospital.

Account to be laid annually before parliament.

LXXXV. And be it further enacted, That there shall be laid annually before both Houses of Parliament within fourteen days after their first meeting, by the treasurer of the Navy, an account of the charges and remunerations allowed and paid as aforesaid.

Offences against this act may be tried in any county of England.

LXXXVI. And be it further enacted, That where the offence of taking a false oath, or suborning any person so to do, or any of the offences by this act made cognizable in any of his Majesty's Courts of Record in Great Britain, shall be committed out of this realm, the same may be alleged to be committed, and may be laid, enquired of, tried, and determined in any county in England, in the same manner, to all intents and purposes, as if the same had been actually done or committed within the body of such county.

How penalties are to be recovered.

LXXXVII. And be it further enacted, That all penalties and forfeitures imposed by this act, wheresoever the same shall arise or become forfeited, may be recovered by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record in Great Britain, or motion and attachment thereon, in his Majesty's High Court of Admiralty, unless in cases where any other mode is by this act particularly directed; and all penalties and forfeitures imposed by this act, which shall arise or become forfeited in any part of his Majesty's dominions abroad, may be recovered in any Court of Record of his Majesty in the colony, territory, or place where the same shall arise or have become forfeited, or in any of his Majesty's Vice Admiralty Courts having jurisdiction there.

Application of penalties.

LXXXVIII. And be it further enacted, That in all cases in which any agent or person is by this act made subject to the forfeiture of any sum of money equal to any money remaining in his hands, or to the amount of any balances or shares, such sum or sums of money shall, on recovery thereof, go and be applied to the use of the person or persons who shall have been aggrieved by the misconduct of such agent or person, and all pecuniary penalties and forfeitures by this act imposed, other than as aforesaid, and other than such as are by this act directed to be otherwise applied and disposed of, shall go and be applied to the use of the royal hospital for seamen at Greenwich, and shall be sued for in the name of the commissioners and governors thereof.

Punishment of personating officers and seamen to receive prize money, and for

LXXXIX. And whereas by a certain act of parliament, made and passed in the thirty-first year of the reign of his late Majesty King George the Second, intituled "An Act for the Encouragement of Seamen employed in the Royal Navy; and for establishing a regular Method for the punctual, frequent, and certain Payment of their Wages; and for enabling them more easily and readily

to remit the same for the Support of their Wives and Families, and preventing Frauds and Abuses attending such Payments," after reciting that divers wicked practices had been carried on, by personating and falsely assuming the names and characters of officers, seamen, and others entitled or supposed to be entitled to wages, pay, or other allowances of money, or prize money, for serving on board of ships or vessels of the Royal Navy, and by forging and counterfeiting letters of attorney, bills, tickets, assignments, last wills, and other authorities and powers from such officers and seamen, and by falsely taking out probate of wills and letters of administration to such officers and seamen; it is enacted, that from and after the first day of November, which was in the year of our Lord one thousand seven hundred and fifty-eight, whosoever willingly and knowingly should personate, or falsely assume the name or character of, or procure any other person to personate or falsely to assume the name or character of any officer, seaman, or other person entitled, or supposed to be entitled to any wages, pay, or other allowances of money, or prize money, for service done on board of any ship or vessel of his Majesty, his heirs or successors, or the executor or administrator, wife, relation, or creditor of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due or payable for or on account of the services of any such officer or seaman, or other person as aforesaid; or should forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, pay, or other allowance of money or prize money, due or supposed to be due, to any such officer or seaman, or other person as aforesaid, or should willingly and knowingly take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay, or other allowances of money, or prize money, due or that were supposed to be due, to any such officer, seaman, or other person as aforesaid, who had really served, or had been supposed to have served, on board of any ship or vessel of his Majesty, his heirs or successors, every such person so offending, being lawfully convicted of any such offence or offences, should be deemed guilty of felony, and should suffer death as a felon, without benefit of clergy: and whereas by a certain act of parliament, made and passed in the ninth year of the reign of his present Majesty, intituled "An Act for repealing so much of an Act, passed in the Tenth Year of Her late Majesty Queen Anne, as relates to the Harbour Moorings of the Royal Navy, and for the more effectual Preservation of such Harbour Moorings; and Punishment of Persons guilty of stealing or embezzling His Majesty's Naval Stores; or of Forgery or Perjury, in relation to Seamen's Wages," it is (among other things) enacted, that if any person should, from and after the twenty-fourth day of June, which was in the year of our Lord one thousand seven hundred and sixty-nine, utter or publish as true, any false, forged, or counterfeited letter of attorney, bill, ticket, certificate, or assignment, last will, or any other power or authority whatsoever, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due to any officer or seaman, or other person who should have really served, or should have been supposed to have served, or should hereafter serve, or should be supposed to have served, on board of any ship or vessel of his Majesty, his heirs or successors, with intent to defraud any person, knowing the same to be false, forged, or counterfeited, every such person, being thereof lawfully convicted, should be deemed guilty of felony, and should suffer death as a felon, without benefit of clergy: and whereas doubts have arisen, whether the punishment inflicted by the said two last-recited acts of parliament on persons guilty of the several offences therein mentioned, extends to such offences, when committed with an intention to defraud any corporation; be it therefore enacted, That, from and after the passing of this act, whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name or character of any officer, seaman, or other person entitled, or supposed to be entitled, to any wages, pay, or other allowances of money, or prize money, for service done on board of any ship or vessel of his Majesty, his heirs or successors, or the executor or administrator, wife, relation, or creditor, of any such officer or seaman or other person, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due or payable, for or on account of the services of any such officer or seaman, or other person as aforesaid, or shall forge or counterfeit, or procure to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, order, assignment, last will, or any other power or authority whatsoever, in order to receive any

forging or  
uttering orders  
for payment  
thereof.

9 G. 3. c. 30.

such wages, pay, or other allowances of money, or prize money, which shall be due, or be supposed to be due, to any such officer or seaman, or other person as aforesaid, or shall willingly and knowingly take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive the payment of any wages, pay, or other allowances of money, or prize money, which shall be due, or be supposed to be due to any such officer, seaman, or other person as aforesaid, who shall have really served, or shall be supposed to have served on board of any ship or vessel of his Majesty, his heirs or successors; or if any person shall, from and after the passing of this act, utter or publish as true any false, forged or counterfeited letter of attorney, bill, ticket, certificate, order, or assignment, last will, or any other power or authority whatsoever, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due to any officer or seaman, or other person who shall have really served, or shall be supposed to have served, or shall hereafter serve, or be supposed to have served on board of any ship or vessel of his Majesty, his heirs or successors, with intent to defraud any corporation whatsoever, knowing the same to be false, forged, or counterfeited, every such person, being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Actions to be  
commenced  
within three  
years.

XC. Provided always, and be it further enacted, That no action shall be brought against any person or persons whomsoever, for any matter or thing whatsoever, done or committed under or by virtue or in the execution of this act, unless such action shall be brought within three years next after doing or committing of such matter or thing, save as to matters or things arising out of captures in any former war: provided also, that if any action or suit shall be hereafter commenced or prosecuted against any person or persons for any matter or thing done under or by virtue or in the execution of this act, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff or plaintiffs shall become non-suited, or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant or defendants, such defendant or defendants shall recover treble costs, for which he, she, or they shall have the like remedy as where costs by law are given to defendants.

**SCHEDULE (A).**

Form of Condemnation to be signed by the Prize Agent, and transmitted to Greenwich Hospital, agreeably to the 23d sect. of this act.

|                        |                |                |   |                      |                         |                                  |   |  |
|------------------------|----------------|----------------|---|----------------------|-------------------------|----------------------------------|---|--|
| Date<br>of<br>capture. | Name of prize. | Master's name. | Capturing ship,<br>or<br>ships entitled to share. | Commander's<br>name. | Date<br>of<br>sentence. | Date<br>of<br>appeal,<br>if any. | Decretal Part of<br>sentence,<br>whether for capture,<br>salvage, or head<br>money, &c. | State of the property condemned,<br>and in what it consists, whether<br>sold or part sold only, the pro-<br>duce of such part as is sold, and<br>in what the unsold part consists. |
|                        |                |                |   |                      |                         |                                  |   |  |

## SCHEDULE (B).

*Repealed by 58 Geo. 3. c. 64.*

## SCHEDULE (C).

Act of parliament, 54 Geo. 3. Chap. . Section .

Navy Pay Office, London.

I request that the prize money noted on the document which will be produced herewith may be paid, or that a reason may be assigned for its disallowance, in the manner pointed out in the above act of parliament.

A. B. officer for prizes ;  
or, C. D. clerk of the cheque of Greenwich Hospital,  
(as the case may be.)

## No. XIX.

59 Geo. 3. c. 56. (2d July, 1819.)

*An Act to make further Regulations as to the Payment of Navy Prize Orders.*

WHEREAS an act passed in the fifty-fourth year of his present Majesty, intituled  
54 G. 3. c. 93. "An Act for regulating the Payment of Navy Prize Money, and the Trans-  
mission of Accounts and Payment of Balances to Greenwich Hospital : " And  
58 G. 3. c. 64. whereas another act passed in the fifty-eighth year of his present Majesty,  
intituled "An Act to make further Regulations respecting the Payment of Navy  
Prize Money, and to authorize the Governors of Greenwich Hospital to pay over  
certain Shares of Prize Money due to Russian Seamen to his Excellency the  
Russian Ambassador : " And whereas it is expedient that other regulations  
should be made with respect to the receipt and payment of Navy prize money ;  
be it enacted by the King's most excellent Majesty, by and with the advice and  
consent of the lords spiritual and temporal, and commons, in this present par-  
liament assembled, and by the authority of the same, that such of the provisions  
of the said herein-before mentioned act of the fifty-fourth year of the reign of his  
present Majesty relating to the licensing of agents by the treasurer of his Ma-  
jesty's Navy, as are altered by this act, and such of the provisions of the said  
herein-before mentioned act of the fifty-eighth year of the reign of his present  
Majesty, as relate to orders made or to be made by petty officers and seamen,  
non-commissioned officers of marines and marines, supernumeraries or boys, shall  
be and the same are hereby repealed.

Provisions of  
54 G. 3. c. 93.  
as relate to  
licensing of  
agents, and  
provisions of  
58 G. 3. c. 64.  
as relate to  
orders made  
by petty  
officers, &c.  
repealed.

None but per-  
sons duly  
licensed can  
receive wages  
or prize money  
under orders ;

but the wives  
or relations of  
the parties may  
do so.

II. And be it further enacted, That it shall not be lawful for any person within the United Kingdom to receive any wages, pay, prize money, or bounty money, or money in the nature of bounty money, due or to become due to any petty officer, seaman, non-commissioned officer of marines or marine, supernumerary or boy, for or on account of his services respectively on board any of his Majesty's ships, or in the capture of any fortress upon the land, or any arms, ammunition, stores of war, goods, merchandize, or treasure, on any conjunct expedition of sea and land forces, under any orders made or hereafter to be made by any petty officer or seaman, non-commissioned officer of marines or private marine, supernumerary or boy, other than persons who shall be duly licensed in the manner herein-after mentioned for that purpose : provided always, that nothing herein contained shall extend or be construed to extend to prevent any such petty officers, non-commissioned officers, seamen, or marines, supernumeraries or boys, from giving such orders to receive their wages, pay, prize money, or bounty money, to their wives, or to the persons in the several degrees of relationship following : that is to say, parents, children, brothers, or sisters of such petty officers, seamen,

marines, supernumeraries or boys; any thing herein-before contained to the contrary thereof in anywise notwithstanding.

III. And be it further enacted, That if any person who shall falsely represent himself or herself to be within any of the degrees of relationship in blood as before described, in order to enable himself or herself to receive any prize money or bounty money, or share of prize money or bounty money, due or to grow due for or on account of the services of any such petty officer, non-commissioned officer, seaman, or marine, supernumerary or boy, under any such order as aforesaid; or who, not being within any such degree of relationship, and not being licensed as aforesaid, shall receive any wages, pay, prize money, bounty money, or other allowances of money for the use of any such petty officer, non-commissioned officer, seaman or marine, supernumerary or boy; or if any agent or person, whose licence shall have been revoked as herein-after mentioned, shall offer himself to receive or shall receive any such wages, pay, prize money, bounty money, or other allowance of money, not being within any of the degrees of relationship aforesaid, and be thereof duly convicted, shall be deemed guilty of a misdemeanor, and punished accordingly.

Persons falsely representing themselves as relations, &c. in order to receive such wages or prize money, deemed guilty of a misdemeanor.

IV. And be it further enacted, That from and after the passing of this act, every person not being a prize agent, and having given security as such in the sum of five thousand pounds according to the provisions of the said act passed in the fifty-fourth year of his present Majesty, shall, before he can lawfully act as an agent for receiving the wages, pay, prize money, bounty money, or other allowances of money, of any such petty officers, non-commissioned officers, seamen, or marines, take out a licence for that purpose from the treasurer of his Majesty's Navy for the time being, who is hereby authorized and empowered to grant the same to such person as the said treasurer shall in his discretion consider fit and proper to be licensed for that purpose; and the person so approved by the said treasurer to be licensed shall, previously to his receiving his licence to act as such agent, enter into a bond with two sufficient sureties, to be jointly and severally bound to his Majesty, his heirs and successors, in the penalty of five hundred pounds, that such person so taking out such licence shall demean himself properly, and duly account to all persons for whom or for whose use any such wages, pay, prize money, or bounty money, shall have come to his hands, which said bond shall be in the form set out in the schedule to this act annexed, marked (A.): provided nevertheless, that this act shall not extend, or be construed to extend, to prevent such agents as have already taken out licences from the treasurer of his Majesty's Navy, in conformity to the said act of the fifty-fourth year of his present Majesty, from acting as such licensed agents during their respective existing licences.

Persons before acting as agents for receiving wages, &c. shall take out a licence from the treasurer of the Navy, and enter into a bond for 500*l*.

V. And be it further enacted, That every licence granted in pursuance of this act the sum of twenty shillings, and no more, over and above any stamp duties that may be due and payable thereon, shall be paid by the person taking out the same, to the paymaster of incidents in the said office of the treasurer of the Navy, towards the incidental expences therein incurred, which licence shall be in force for the term of three years from the date thereof (unless previously revoked by the treasurer of the Navy), and no longer.

20*s*. to be paid for the licence, beside the stamp duty: To be in force three years.

VI. Provided always, and be it further enacted, That if after the taking out of any licence granted in conformity with this act, it shall appear to the treasurer of his Majesty's Navy for the time being, that any such licensed agent hath abused the trust reposed in him, by not duly accounting to any person or persons by whom he shall have been empowered to receive any such wages, pay, prize money, bounty money, or other allowances of money as aforesaid, for the sum or sums of money received by him in that behalf, or by practising any fraud or imposition on any such person or persons, then and in that case it shall and may be lawful for the said treasurer, by any writing under his hand to be delivered to such licensed agent, or left at his last or most usual place of abode, or place where his business of agency shall be carried on, to revoke the licence so to be granted or taken out as aforesaid; which revocation, if such agent's place of transacting agency business shall be in London, or within the bills of mortality, shall be published in the London Gazette; and if in the country, or out of the said bills of mortality, also in some public newspaper in circulation at or near to the place where such agent shall transact his business of agency, for the information of all persons interested in wages or prize money, and thenceforth the power and authority of such agent to demand and receive wages, pay, prize money, bounty money, and other allowances of money, due or to grow due on account of the services of any such petty officers, non-commissioned officers, seamen, or marines, supernumeraries or boys, shall absolutely cease and determine.

But licence may be revoked for misconduct, of which notice shall be given in the London Gazette, &c.

A list of names and residence of agents to be hung up in the Navy Pay Office.

Notice to be given by agents of their removal, on penalty of 50*l*.

In case of bankruptcy of agents, orders only available for sums advanced thereon.

Orders for payment, certificate as to the right of the persons giving them, and the inventory of goods furnished, shall be in the forms set forth in schedules (B.), (C.), and (D.)

Orders declared irrevocable.

Falsifying dates of orders declared a misdemeanor.

Payment of prize money upon orders, except such as are certified, confined to the treasurer and

VII. And be it further enacted, That the names and places of abode, and of transacting agency business of every such licensed agent, shall be inserted in a list, and hung up in the hall of the Navy Pay Office in Somerset Place, and in some conspicuous place in each of the Navy Pay Offices at the several outports of the United Kingdom, for the inspection of all persons who shall resort thither on business; and which lists shall be renewed from time to time as occasion may require.

VIII. And be it further enacted, That as often as any such licensed agent shall remove or change his office or place of conducting the business of agency, he shall, within fourteen days after every such removal or change of place, give notice thereof in writing to the treasurer of his Majesty's Navy, and to the clerk of the cheque of Greenwich Hospital for the time being, on pain of forfeiting for every neglect thereof the sum of fifty pounds.

IX. And be it further enacted, That in case any licensed agent shall become bankrupt, all orders made under or by virtue of former acts of parliament which shall be in his possession, or to which he may be entitled at the time of his bankruptcy, shall be available against the said royal hospital for seamen at Greenwich for so much money only as shall be proved to the satisfaction of the treasurer and clerk of the cheque of the said hospital to have been advanced upon such orders by the agent in whose favour the said orders are made.

X. And be it enacted, That from and after the passing of this act, all orders made by petty officers and seamen, non-commissioned officers of marines and marines, supernumeraries or boys, and others entitled to prize or bounty money, grant, or other allowances of money in the nature thereof, shall be in the form or to the effect set forth in the schedule to this act annexed, marked (B.), and shall contain in the body of such orders the value in money and goods advanced by the person in whose favour such order is made to the person making the same; and a certificate shall be printed on the back of the paper containing such order, according to the form or to the effect set forth in the schedule to this act annexed, marked (C.), which certificate shall particularly state whether the person making the order is known to the person signing such certificate, or by whom he is represented to be the person entitled to make such order, and the said certificate shall be signed as directed at the foot of the said schedule; and the treasurer and clerk of the cheque of the said royal hospital shall pay upon every such order, out of the money belonging to the person making the same, so much as shall appear to be due to the payee named therein, with legal interest thereon (if the amount of the share of the person making such order will admit of such interest being paid), and no more; and at the foot of such certificate shall be set out and scheduled an inventory of any goods furnished by the payee to the person making such order, together with the prices charged for the respective articles in such schedule contained, which schedule shall be witnessed by the same person or persons as shall sign the certificate of the due execution of the order, after examining the party making such order to the correctness of the said particulars, and which said schedule or inventory shall be in the form or to the effect in the schedule to this act annexed marked (D.).

XI. And be it further enacted, That from and after the passing of this act all orders made in pursuance thereof, or in pursuance of the said act of the forty-eighth year of his present Majesty, by petty officers and seamen, non-commissioned officers of marines or private marines, or others entitled to prize or bounty money, grant, or other allowances of money in the nature thereof, and also all orders made under or by virtue of any former act or acts which shall not have been revoked before the passing of this act, shall be and the same are hereby declared to be irrevocable.

XII. And be it further enacted, That if any person or persons shall knowingly insert, or cause to be inserted in any order for the payment of prize money, bounty money, grants, or other allowances of money payable by the commissioners and governors of the royal hospital for seamen at Greenwich, or by their treasurer, any other date than the day on which the said order shall be executed, or shall knowingly present or utter any order bearing any false date as aforesaid, such person or persons shall for every such offence be deemed guilty of a misdemeanor, and punished accordingly.

XIII. And be it further enacted, That from and after the passing of this act the payment of prize money upon orders, except such orders as shall be certified by the clerk of the cheque of the said royal hospital, in manner herein-after mentioned, shall be confined to the treasurer and clerk of the cheque of Greenwich Hospital; and that no agent or agents appointed for the distribution of any navy, prize, or bounty money, grant, or other allowances of money, whether



arising from or given in consequence of conjunct expeditions or services by the navy only, shall pay any share or shares of the non-commissioned officers, seamen, or marines, or supernumeraries or boys entitled thereto, upon any order or letter of attorney or other written power or authority whatsoever, except certified as herein-after mentioned, but shall pay the same to the said non-commissioned officers, seamen, marines, and supernumeraries or boys, upon their respective applications only, upon pain of forfeiting for every payment made otherwise than as directed in this act, the sum of fifty pounds, to be recovered by and in the name of the treasurer of the said royal hospital.

XIV. And be it further enacted, That it shall be lawful for the persons licensed as agents by the treasurer of the Navy as aforesaid, and for the relations of persons entitled as aforesaid, and they are hereby required and directed, after the advertisement notifying that the account of sales of any prize or prizes is about to be brought into the Registry of the High Court of Admiralty pursuant to the provisions of the said herein-before mentioned act of parliament of the fifty-fourth year of the reign of his present Majesty, or immediately after the execution of such orders, to transmit or deliver to the clerk of the cheque of the said royal hospital all or any orders which such licensed agents may have received in conformity with the provisions of this or any former act, from persons entitled to prize money, bounty money, grant, or other allowances of money; which orders, so delivered or transmitted as aforesaid, shall remain for examination with the said clerk of the cheque at the said royal hospital for the space of thirty days, at the expiration of which time the said clerk of the cheque shall certify upon the said orders respectively, whether he is satisfied that the same are respectively executed in compliance with the provisions of the several laws in force respecting such orders; and the agent for the distribution of the respective prizes named in the said orders shall only pay to the licensed agent, or such relations as aforesaid, during the time of distribution, and upon such orders only as are certified for payment by the said clerk of the cheque; and that in case any order made previously to the passing of the said act of the fifty-eighth year of his present Majesty, shall be unpaid at the decease of the party making the same, then so much only as shall have been actually advanced upon the said order, to be proved to the satisfaction of the clerk of the cheque, and certified by him, shall be paid thereon.

XV. And be it further enacted, That in case the whole money due to the licensed agent upon any order made and certified as aforesaid, shall not have been fully paid or satisfied at the time of the same being returned to the said royal hospital by the agent appointed for distribution of any prize or prizes, then it shall be lawful for the said clerk of the cheque of the royal hospital, and he is hereby directed upon any other prize or bounty money, grant or other allowances of money to which the said order relates, coming into distribution, or upon any second or further payment being made thereon, to transmit or deliver to the agent employed in such distribution or further payment, the said order certified as aforesaid, or a certificate of the money still remaining due thereon, in order to enable the licensed agent named in the said order to receive full satisfaction for the sum remaining due and unpaid thereon; and the agent to whom the said order or certificate shall be delivered as aforesaid shall pay the residue of the money payable and unsatisfied upon the said order; and the said order or certificate being returned to the said clerk of the cheque upon the delivering of the accounts of the said distribution shall be a good and sufficient voucher for the money paid thereon.

XVI. And be it enacted, in order to enable the said clerk of the cheque to examine and certify such orders as herein-before directed, That no agent or agents appointed for the sale and distribution of any prize or prizes, bounty money, grant, or other allowances of money in the nature thereof, shall commence distribution until the expiration of thirty days from the insertion in the Gazette of the said notification, that the account of sales is about to be brought into the High Court of Admiralty; and every agent appointed for the purposes aforesaid shall, and he is hereby required, on or before the insertion of the said notification in the London Gazette, to deliver to the clerk of the cheque of the said royal hospital, a true and perfect copy of the distribution list of the respective prizes to which the said notification refers; which list, or a copy thereof, shall be returned by the clerk of the cheque to the agent furnishing the same, at the expiration of the time allowed by law for distribution by the said prize agent; and every prize agent who shall refuse or neglect to furnish such list as aforesaid shall forfeit the sum of one hundred pounds; all which orders, so certified and paid upon as aforesaid, shall be delivered to the treasurer of the said

the clerk of the cheque of Greenwich Hospital.

Unless orders are certified, prize money payable only on personal application.

Agents to transmit orders to the clerk of the cheque for examination, who, at the expiration of 30 days, may certify that he is satisfied.

Prize agent to pay only such orders as are certified.

If the money due on any such order be not wholly paid, the clerk of the cheque shall again certify the same to the prize agent on making other distribution, that the licensed agent may receive the sum remaining due.

Prize agents not to commence distribution till 30 days after notification in the Gazette; and before giving such notification they shall deliver a list of the prizes to the clerk of the cheque, on penalty of 100*l*.

Persons entitled to prize money endeavouring to obtain payment by false certificates, &c. deemed guilty of a misdemeanor.

Persons falsely assuming the name and character of others entitled to prize money, &c. or forging or counterfeiting letters of attorney orders, wills, &c. in order to receive wages, &c. or taking false oath to obtain probate, &c. deemed guilty of felony.

royal hospital as vouchers at the time directed by law for rendering accounts, and paying over the balances of the respective distributions of any prize or prizes.

XVII. And be it further enacted, That if any person or persons really entitled to prize or bounty money, pension money, grant, or other allowance of money on account of services on board of any ship or vessel, shall by the production of any false certificate, or by making any false representation, obtain or endeavour to obtain from the said royal hospital, or from any licensed agent, the said prize or bounty money, pension money, or other allowance of money so due to him as aforesaid, such person or persons shall be deemed guilty of a misdemeanor, and shall forfeit all prize or bounty money, pension money, grant, or other allowance of money due to him on account of his said services.

XVIII. And be it further enacted, That if any person or persons shall willingly or knowingly personate, or falsely assume, or cause, procure, aid, or assist any person to personate or falsely assume, the name or character of any commissioned officer, warrant or petty officer, or seaman, or any commissioned or non-commissioned officer of marines or marine, supernumerary, or boy, or any other person entitled or supposed to be entitled to any wages, pay, prize money, bounty money, pension money, or other allowances of money, for or in respect of services performed or supposed to have been performed on board of any ship or vessel of his Majesty, his heirs or successors; or shall personate or falsely assume the name or character, or shall assist in personating or falsely assuming the name or character of the wife, widow, executor, or administrator, relation or creditor of any such officer, seaman, or other person, in order to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his Majesty, his heirs or successors; or shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting or altering any letter of attorney, order, bill, ticket, certificate of service, or other certificate whatsoever, assignment, last will, or other power or authority whatsoever, in order to receive or to enable any other person to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, supernumerary, or boy, or other person as aforesaid, performed or supposed to have been performed on board any ship or vessel of his Majesty, his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall utter or publish as true, or shall aid or assist in uttering or publishing as true, any false, forged, counterfeited, or altered, letter of attorney, order, bill, ticket, certificate of service, or other certificate whatsoever, assignment, last will, or other power or authority whatsoever, knowing the same to be false, forged, counterfeited, or altered, in order to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, supernumerary, or boy, or other person, as aforesaid, performed or supposed to have been performed on board of any ship or vessel of his Majesty, his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall willingly and knowingly take a false oath to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive or to enable any other person to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, supernumerary, or boy, or other person as aforesaid, performed or supposed to have been performed on board of any of his Majesty's ships or vessels, his heirs or successors, or shall demand or receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board any of his Majesty's ships or vessels upon or by virtue of any probate of any will or letters of administration, knowing the will on which such probate shall have been obtained to be false, forged, and counterfeited, or knowing the probate of such will, or such letters of administration, as last aforesaid, to have been obtained by means of any such false oath as aforesaid, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, then every such person or persons so offending, and being thereof

convicted according to due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

XIX. And be it further enacted, That every agent or other person authorized and empowered to receive any prize or bounty money, or other monies as aforesaid, shall, within ten days after he shall have rendered to the treasurer of Greenwich Hospital, or his deputy, and verified his statement and account of the proceeds and distribution of any such prize or other monies, deliver or transmit to the treasurer or paymaster of his Majesty's Navy a copy of such statement and account (the charge for copying the same being allowed to the said agent), under the like penalty for neglect as is by this act imposed for neglecting to render such statement and account to the treasurer of the said royal hospital, or his deputy.

Prize agents to transmit verified accounts of the distribution of prizes to the treasurer of the Navy, within a limited time.

### SCHEDULE (A).

Know all men by these presents, that we \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ are jointly and severally held and firmly bound to our sovereign lord the King, and to the treasurer of Greenwich Hospital for the time being, in the sum of five thousand pounds of lawful money of the United Kingdom of Great Britain and Ireland, current in England, to be paid to our said sovereign lord the King, and to the treasurer of Greenwich Hospital for the time being, or either of them, or their certain attorney, successors, or assigns, for which payment to be well and truly made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our sovereign lord George the \_\_\_\_\_ by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and \_\_\_\_\_

The condition of this above written obligation is such, that if the above bounden \_\_\_\_\_ shall duly execute his trust in all matters of prize agency that shall be committed to his care, and if the above bounden \_\_\_\_\_ his executors or administrators, do and shall in all things conform to the rules, regulations, and provisions of the several acts now in force with respect to prize or bounty money, grants, or other allowance of money, as far as the said acts relate to licensed agents, then this obligation to be void, or else to remain in full force and virtue.

### SCHEDULE (B).

Order for the payment of prize or bounty money, grant, or other allowances in the nature thereof.

Not revocable.

This order is signed at \_\_\_\_\_ in the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

At seven days' sight pay to \_\_\_\_\_ or his order, the sum of \_\_\_\_\_ out of the amount of my share of prize or bounty money, grant, or other allowance of money in the nature thereof, for the capture of \_\_\_\_\_ while I was serving on board his Majesty's ship or vessel the \_\_\_\_\_ for value advanced to me by the said \_\_\_\_\_

To the treasurer of Greenwich Hospital and clerk of the cheque there.

### SCHEDULE (C).

Certificate.

This is to certify, that the within order was signed in my [or our] presence by the said \_\_\_\_\_ who is known to me, [or represented to me by \_\_\_\_\_]

of [ ] to be the person who was serving in quality  
 on board his Majesty's ship or vessel the at the  
 captures in the said order mentioned.

Witness my [or our] hand at in the county  
 of this day of 18 .

} Captain, or minister and churchwardens  
 of the said parish of

Note. — This certificate to be signed by the captain or commanding officer, and one other signing officer of the ship to which the party belongs.

If discharged from the service, and resident at any place where there is a deputy or agent of the hospital, to be signed by that deputy.

If within four miles of the hospital, by the clerk of the cheque or his first clerk.

If at any other place within the bills of mortality, by the officer for prizes in the Navy Pay Office or his assistant.

If by marines at head quarters where there is no deputy to the hospital, to be signed by the colonel or commanding officer and the adjutant.

If by any person at sick quarters, to be signed by the surgeon and one of his assistants; but where there is a deputy, to be signed by such deputy.

If at any other place in England, to be signed by the minister and one of the churchwardens; and if in Scotland, by the minister and one of the elders.

#### SCHEDULE (D).

The following are the particulars acknowledged by the said  
 to have been received by him, and to be the consideration for  
 the within order.

[here state particulars.]

Witness

#### No. XX.

9 & 10 Vict. c. 99. (28th August, 1846.)

*An Act for consolidating and amending the Laws relating to Wreck and Salvage.*

Commence-  
ment of the act.

Recited acts  
repealed, viz.  
12 Anne, st. 2.  
c. 18.

4 G. 1. c. 12.

WHEREAS divers acts have been passed through a long series of years for preserving ships and goods stranded or cast on shore, as well as for preventing frauds and depredations on shipowners and others, and for the adjustment of salvage: and whereas it is expedient to consolidate and amend the same: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall come into operation on the passing thereof as to the appointment of the officers hereby authorized, and the posting of their names, and as to the other parts thereof on the first day of October one thousand eight hundred and forty-six.

II. And be it enacted, That the several acts herein-after mentioned and referred to shall be repealed; (that is to say,) an act passed in the twelfth year the reign of her Majesty Queen Anne, intituled "An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom or any other of her Majesty's Dominions;" and also an act passed in the fourth year of the reign of his Majesty King George the First, intituled "An Act for enforcing and making perpetual an Act of the Twelfth Year of her late Majesty, intituled 'An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom or any other of her Majesty's Dominions:' and for inflicting the Punishment of Death on such as shall wilfully burn or destroy Ships;" and also an act passed in the twenty-sixth year of the reign of his

Majesty King George the Second, intituled "An Act for enforcing the Laws against Persons who shall steal or detain shipwrecked Goods, and for the Relief of Persons suffering Losses thereby;" and also an act passed in the forty-ninth year of the reign of his Majesty King George the Third, intituled "An Act for preventing Frauds and Depredations committed on Merchants, Shipowners, and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in England under an Act made in the Twelfth Year of Queen Anne;" and also an act passed in the fifty-third year of the reign of his Majesty King George the Third, intituled "An Act to continue for Seven Years Two Acts, passed in the Forty-eighth and Forty-ninth Years of his present Majesty, for preventing Frauds by Boatmen and others, and adjusting Salvage, and for extending and amending the Laws relating to Wreck and Salvage;" and also an act passed in the fifty-third year of the reign of his Majesty King George the Third, intituled "An Act to amend an Act made in the last Session of Parliament, intituled 'An Act for the more effectual Regulation of Pilots and of the Pilotage of Ships and Vessels on the Coast of England,' and for the Regulation of Boatmen employed in supplying Vessels with Pilots licensed under the said Act, so far as relates to the Coast of Kent within the Limits of the Cinque Ports;" and also an act passed in the session of parliament holden in the first and second years of the reign of his Majesty King George the Fourth, intituled "An Act to continue and amend certain Acts for preventing Frauds and Depredations committed on Merchants, Shipowners, and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in England, under an Act made in the Twelfth Year of Queen Anne;" and also so much of an act passed in the session of parliament holden in the third and fourth years of the reign of her present Majesty Queen Victoria, intituled "An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England," as relates to awards made by justices and others in salvage cases, and appeals therefrom; and also so much of an act passed in the session of parliament holden in the eighth and ninth years of her present Majesty Queen Victoria, intituled "An Act for the general Regulation of the Customs," as relates to persons being in possession of goods derelict, jetsam, flotsam, or wreck, and to the disposal of such goods; and also an act passed in the parliament of Ireland in the fourth year of the reign of his Majesty King George the First, intituled "An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom;" and also so much of an act passed in the parliament of Ireland in the eleventh year of the reign of his Majesty King George the Second, intituled "An Act for enforcing and making perpetual an Act intituled 'An Act for the preserving of all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom;' and also for inflicting the Punishment of Death on all such as shall wilfully burn, sink, or destroy Ships," as makes the said last-mentioned act of the fourth year of the reign of his Majesty King George the First perpetual; and also so much of an act passed in the parliament of Ireland in the seventeenth year of the reign of his Majesty King George the Second, intituled "An Act for the Amendment of the Law in relation to Forgery, and the Salvage of Ships and Goods stranded," as relates to salvage and proceedings relating thereto; and also an act passed in the session of the parliament of Ireland holden in the twenty-third and twenty-fourth years of the reign of his Majesty King George the Third, intituled "An Act for the Amendment of the Law in relation to the Salvage of Ships and Goods stranded, or in Danger of perishing at Sea;" and the said several acts and parts of acts herein-before mentioned and set forth are hereby accordingly repealed, except so far as the said acts or any of them, or any thing therein contained, repeal any former act or acts, or any parts thereof; and all and every which said act or acts, or the parts thereof so repealed, shall remain and continue repealed to all intents and purposes whatsoever; provided always, that all offences which shall have been committed and all penalties and forfeitures which shall have been incurred previously to the first day of October one thousand eight hundred and forty-six shall and may be punishable and recoverable respectively under the above-mentioned acts or any of them as if the same had not been repealed.

III. And be it enacted, That, for the purpose of carrying the provisions of this act into effect, the Receiver General of Droits of Admiralty may from time to time appoint persons to act under him, to be styled "Receivers of Droits of Admiralty;" and in the construction of this act the word "Receivers" shall mean Receivers of Droits of Admiralty; and such receivers shall hold their

Receivers of Admiralty droits to be appointed and their names and addresses

to be posted at custom houses and at Lloyd's.

All provisions in this act respecting receivers shall be applicable to the present agents appointed by the receiver general.

Appointments of agents exempt from stamp duty.

Lords of manors, &c. claiming a right to wreck to give notice to a receiver.

All persons finding wreck, &c. to report and deliver it forthwith to a receiver or officer of the Customs.

offices during the pleasure of the receiver general and the pleasure of the Commissioners of Admiralty; and the said receivers shall be entitled to the fees herein-after mentioned, together with a further remuneration, to be defrayed out of the proceeds of sales of droits made by them, at the rate of five pounds for every hundred pounds, after abating the charges and expences incurred by them; and the said receiver general shall send a list containing the names of such receivers, with their respective addresses, to the collectors of her Majesty's Customs at the different ports of England and Wales and Ireland, and also to the secretary of the committee for managing the affairs of Lloyd's in the city of London; and the said collectors and secretary respectively shall cause the said list to be affixed in a conspicuous place in the custom houses in the said ports and at Lloyd's aforesaid respectively: provided always, that all the provisions contained in this act having reference to the said receivers, whether as to their style, office, powers, duties, remuneration, or otherwise, or as to the posting of their names, shall in all respects be applicable to those persons who shall at the time of the passing of this act have been appointed agents to the said Receiver General of Droits of Admiralty, in as full and ample a manner as if the said agents had been appointed receivers under this act; and all appointments in writing of agents or receivers by the Receiver General of Droits of Admiralty, heretofore or which may be hereafter made, are hereby declared to be exempt from stamp duty.

IV. And be it enacted, That every lord or lady of any manor, or patentee or grantee of the Crown, or other person or body corporate who may be entitled to or claim to be entitled to wreck of the sea, or to any goods found jetsam, flotsam, lagan, or derelict, shall deliver, or send by the general post or otherwise, a notice in writing, setting forth such claim, to such one of the receivers respectively whose residence shall be within or nearest to the said manor or other district in which such claim is made; and that no such lord or lady of any manor aforesaid, patentee or grantee of the Crown, nor any other person or body corporate, shall be considered as possessing such title, or be able to enforce the same at law or in equity, until such notice shall have been so given as aforesaid: provided always, that where two or more notices shall be given claiming the same rights the party who shall adduce to the receiver evidence of his having enjoyed such rights, or if both parties shall adduce evidence thereof, then the party who shall appear to the receiver to have been last in the enjoyment of such rights, shall be considered as the party entitled, until such conflicting claims shall have been finally determined at law or in equity; and unless such evidence shall be adduced by one of the said parties, such receivers, being in possession of such wreck of the sea, or goods jetsam, flotsam, lagan, or derelict, shall not deliver the same, except to the original owner thereof, until such conflicting claims shall have been determined as aforesaid.

V. And be it enacted, That all persons whomsoever who shall find, take up, or be in possession of any wreck of the sea, or any goods jetsam, flotsam, lagan, or derelict, or any boat, vessel, apparel, anchor, cable, tackle, stores, or materials, or any goods, merchandize, or other article whatsoever, which shall have been found floating or sunk at sea, or elsewhere in any tidal water, or cast, thrown, or stranded upon the shore, and whether the same be found above or below high-water mark, and whether wholly on land or wholly in the water, or partly on land and partly in the water, or shall find or take possession of any droit of Admiralty of any description, whether such person shall claim to be entitled to such article or droit or not, shall forthwith send to the receiver or to the collector or comptroller of Customs at the port or place nearest to which such articles or droits have been found a report in writing of all such articles or droits so found, containing an accurate and particular description of the marks (if any) thereon, and of the time and situation when and where the same were found, and shall also forthwith place such articles or droits at the disposal of the said receiver or officer of the Customs; and every officer of the Customs receiving such report shall forthwith transmit the same to the nearest receiver; and every person who shall keep possession of or retain, or conceal or secrete, any such wreck of the sea, jetsam, flotsam, lagan, derelict, boat, vessel, apparel, anchor, cable, tackle, stores, materials, goods, merchandize, or other article as aforesaid, or shall deface, take out, or obliterate any name, mark, or number thereon, or alter the same in any manner, or shall keep possession of or retain, or conceal or dispose of any droit of Admiralty, or shall not forthwith report and place at the disposal of such receiver or officer of the Customs any such article or droit in the manner aforesaid, shall forfeit all claim to salvage, and shall on conviction forfeit any sum not exceeding one hundred pounds, and also forfeit and pay double the value of the articles to

the owner thereof, if claimed, or to her Majesty, if the same become or be a droit of Admiralty; which double value may be recovered in the same manner as a penalty under this act.

VI. And be it enacted, That it shall be lawful for any receiver or officer of the Customs upon warrant obtained by application to any magistrate or justice of the peace, who is hereby empowered to grant the same, to search for, seize, and detain any such article or droit as shall not have been reported or dealt with in the manner herein-before directed, either on shore, stranded, or afloat, and for that purpose to enter any house, store, or building, or any ship, vessel, or boat; and every officer of the Customs so seizing as aforesaid shall forthwith send to the nearest receiver a report in writing of the articles or droits so seized, and describing the marks (if any) thereon; and every receiver or officer of the Customs so seizing as aforesaid shall be entitled to salvage for the said articles or droits; and if any such seizure shall have been made in consequence of any information given to any such receiver or officer of the Customs, the person who shall give such information shall be entitled to receive such reward out of the salvage as the receiver general of droits of Admiralty shall think fit to allow: provided always, that it shall be lawful for any receiver, as often as the case may arise when articles or droits of Admiralty found within the jurisdiction of the High Court of Admiralty shall be carried away out of such jurisdiction, either within the limits of the Cinque Ports or elsewhere, to seize and carry away the same, and place them in some warehouse or other place of security, to be dealt with in the same manner as is hereby directed and provided in the case of articles which shall have been so reported as aforesaid.

VII. And be it enacted, That every receiver to whom any such report shall be sent, or by whom any such seizure shall be made as aforesaid, shall within forty-eight hours send to the principal officer of the Customs at the nearest port a report in writing containing an accurate description of the articles so reported or seized, and the said receiver shall also forward a report of the articles so reported to or seized by him to the secretary of the committee of Lloyd's aforesaid, and the same shall be placed by the said secretary in some conspicuous situation for the inspection of all persons choosing to inspect and examine the same; and if the said secretary shall neglect or refuse so to place such report or copy, or any other report or copy by this act so directed to be placed, he shall for every such neglect or refusal forfeit and pay the sum of five pounds; and the receiver shall for every such report so forwarded to the said secretary be entitled to receive of and from the owner of the articles in respect of which such report shall have been made, if the same be claimed, or out of the produce of the sale thereof, if the same be not claimed, the sum of ten shillings: provided always, that no report shall be forwarded by a receiver to the said secretary until the articles for and in respect of which a report is required shall amount in value to the sum of twenty pounds at the least.

VIII. And be it enacted, That as often as it shall happen that any lord or lady of any manor, or patentee or grantee of the Crown, or other person or body corporate entitled to or claiming to be entitled to wreck of the sea, or to any goods found jetsam, flotsam, or lagan, shall have given notice to a receiver of such claim as herein-before directed, and that subsequently to such notice being given any article shall be reported to or seized by the same or any other receiver which may appear to such receiver to have been found within the limits of the manor or district in respect of which such notice of claim shall have been given, it shall be lawful for such receiver, and he is hereby directed and required, within twenty-four hours after receiving such report or making such seizure, to send by the general post or otherwise to the said lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate having made such claim as aforesaid, or to his, her, or their bailiff, reeve, or other officer, a notice in writing setting forth an account and description of the article so reported or seized, and of the place and time when and where the same was found.

IX. And be it enacted, That if the rightful owner of any article which has been so reported to or seized by any receiver as herein-before directed shall make out his claim to the said article, to the satisfaction of the said receiver, within the period of twelve calendar months from the day on which such article shall have been so reported to or seized by the said receiver, such article shall be restored to the said owner, on payment of the duties and necessary charges attending the care or removal of the same, and a reasonable compensation for salvage thereof, and also on payment to the said receiver of a sum after the rate of five per centum on the value of the article, but in no case, whatever may be the value of the articles, shall such per-centage exceed fifty pounds.

X. And be it enacted, That when any such article as aforesaid shall have been

Receivers and officers of Customs may by warrant seize goods not reported or delivered, who shall be entitled to salvage.

Informers entitled to such reward as receiver general shall allow.

Receivers to send to principal officers of Customs at nearest port a report of goods reported or seized, when they amount to 20*l.* in value; a copy of the report to be posted at Lloyd's.

Receivers to give notice to lords of manors, &c. of the finding of wreck claimed by them.

Owners of wreck may, on making good their claim within twelve months, have it delivered up to them.

Wreck, &c., not being

claimed by the owner within twelve months, lords of manors, &c. may make good their claim within one month following.

Wreck, &c. not claimed either by owner or lord of the manor to be sold as droits of Admiralty.

Goods deemed perishable or of small value may be sold immediately.

Vice Admirals of counties, &c. not to interfere with wreck, &c.

Where salvage insufficient, Lords of Treasury, on application by receiver general or Lord Warden of Cinque Ports, may allow a sum for salvage.

Receivers, justices, &c. or custom house

in the custody of any receiver in manner aforesaid, and shall not be legally claimed by the owner thereof within the aforesaid space of twelve calendar months, and any lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, having given due notice of his or her claim as herein-before required, or his, her, or their bailiff, reeve, or other officer, shall within the space of thirty days after the expiration of the said term of twelve calendar months make it appear to the said receiver, by the production of satisfactory evidence, that such article was found within the manor or district in respect of which such claim is made, it shall be lawful for the receiver and he is hereby required and enjoined to deliver up such article to the said lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, or his, her, or their bailiff, reeve, or other officer, on payment of the duties, and all charges and expences attending the care or removal of the said article, together with a reasonable compensation for salvage, and also on payment to the said receiver of a sum after the rate of five per centum on the value of the article, but in no case, whatever may be the value of the articles, shall such percentage exceed the sum of fifty pounds: provided always, that if the receiver shall determine against the right of any person claiming to be the owner of any such article as aforesaid, or against the evidence produced by any lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, as to the finding of any such article as aforesaid, he shall be bound, at the request of the party against whom he shall have determined respectively, to signify such determination in writing, with the date thereof and the reasons for the same.

XI. And be it enacted, That when no claim to any article in the custody of any receiver or officer of Customs as aforesaid shall be established, either by the owner thereof, or by any lord or lady of a manor, or patentee or grantee of the Crown, or other such person or body corporate as aforesaid, within the said respective periods as aforesaid, then the said article shall be deemed and taken to be droits of Admiralty, and shall be sold by the said receiver, without any legal process whatsoever, and the net proceeds thereof, after the payment of salvage, when the same shall be payable, and of the other charges, shall be forthwith transmitted by him to the said receiver general: provided always, that when any article in the custody of any receiver or officer of Customs as aforesaid shall be of so perishable a nature, or so much injured or damaged, that the same cannot, in his opinion, be kept, or if the value thereof shall not be sufficient to defray the charge of warehousing, then and in every such case it shall be lawful for the said receiver to sell the same before the expiration of the periods herein-before mentioned, and the money raised by such sale, after defraying the salvage and other expences thereof, shall be transmitted by him to the said receiver general, and remain in the hands of the said receiver general, to abide and be subject and liable to the claims of all persons, in like manner as the article itself would remain and be subject and liable to if remaining unsold: provided also, that it shall be lawful for any receiver, and he is hereby authorized, if he in his discretion think fit, when he shall have in his custody any article which shall not appear to him to be of greater value than five pounds, to sell the same before the expiration of the said periods, and forthwith pay salvage to the party claiming the same, and to transmit the remainder of the proceeds of such sale in the manner herein-before provided; but in every such last-mentioned case the salvor shall not be entitled to more than one third of the net produce of such sale.

XII. And be it enacted, That no vice admiral or deputy vice admiral of any county, or any agent of the same, shall as such henceforth receive, take, seize, or in any manner interfere with any wreck of the sea, or any other of the goods or articles herein-before mentioned.

XIII. And be it enacted, That as often as it shall happen, upon the sale of articles as herein-before directed, that after the payment of duties and other necessary expences there shall not be left a sum sufficient to defray the salvage, it shall be lawful for the receiver, or, if the same shall happen within the jurisdiction of the Lord Warden of the Cinque Ports, the deputy serjeant or other officer of the said lord warden in whose respective custody the articles shall have been, to send a report, stating the circumstances, the said receiver to the said receiver general, and the said deputy serjeant or other officer to the said lord warden, as the case may be; and the commissioners of her Majesty's Treasury, on receiving an application thereupon from the said receiver general or from the said lord warden, as the case may be, may and they are hereby authorized to allow such sum to be paid out of her Majesty's Exchequer by way of salvage as they shall deem sufficient.

XIV. And be it enacted, That when any ship or vessel whatsoever shall be in distress, or in danger of being stranded or run on shore, or shall be stranded or



run on shore, every receiver, as well as all justices of the peace, and also all mayors, bailiffs, and other officers of corporations and port towns, and all constables, head-boroughs, tythingmen, and officers of the Customs and Excise, shall summon and call together as many men as shall be thought necessary to the assistance and preservation of such ship or vessel and its cargo, or for the saving human life, and if there shall be any ship or vessel belonging to any of her Majesty's subjects, or any waggons, carts, and horses, near the place where such ship or vessel is in distress or danger as aforesaid, the said receiver and other officers herein-before mentioned, or any of them, are hereby required and empowered to demand of the superior officer of such ship or vessel assistance by boats, or such hands as can be conveniently spared, and to demand the use of any waggons, carts, and horses of the owner or person having the charge thereof, for the service and preservation of the said ship or vessel in distress as aforesaid, and her cargo, or for the saving of human life; and every such superior officer, owner, or person refusing or neglecting to comply immediately with such demand shall for every such refusal or neglect forfeit and pay any sum not exceeding one hundred pounds.

XV. And be it enacted, That for the prevention of confusion among persons assembled to save any ship or vessel in distress as aforesaid, or any of the goods or effects belonging thereto, all persons so assembled shall conform, in the first place, to the orders of the master or owner or officer in charge of the said ship or vessel in distress, and in the next place to those of the receiver, and for want of their presence to those of the officers herein-after mentioned, in the following subordination, as any of such officers shall be present; (that is to say,) first the officers of Customs or Coast Guard, then those of the Excise, then of the sheriff or his deputy, then any justice of the peace, then any mayor or chief magistrate of any corporation, then any coroner, then any chief constable, then any petty constable or peace officer; and any person whomsoever acting knowingly or wilfully contrary to such orders shall, on conviction before one justice of the peace, forfeit and pay any sum not exceeding fifty pounds.

XVI. And be it enacted, That any receiver, or in his absence any justice of the peace, shall as soon as conveniently may be examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship or vessel which may be or may have been in distress, or others who may be able to give any account thereof, or of the cargo or stores thereof, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer and owners thereof, and of the owner of the said cargo, and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress, and of the services rendered, and as to any other matter or circumstance relating to the said ship or cargo, or any of the stores thereof, as the said receiver or justice may think fit and necessary; and the said receiver or justice shall take the said examination down in writing, and shall make two copies of the same, the one of which he shall send to the said receiver general, and the other to the secretary of the committee of Lloyd's aforesaid, and the said copy shall be placed by the said secretary in some conspicuous situation, in like manner as herein-before directed with respect to other reports so to be made to the said secretary as aforesaid; and for every such examination by a receiver he shall be entitled to receive from the owner of the said vessel or cargo, or out of the produce of the sale thereof, the sum of one pound; and it shall be lawful for the said receiver, or for any officer of the Customs, at the request in writing of the said receiver, to detain such vessel or cargo until the said sum be paid: provided always, that if any person belonging to the said ship or vessel, or otherwise, shall refuse to be so examined by the said receiver or justice as aforesaid, he shall for every such refusal forfeit and pay any sum not exceeding fifty pounds.

XVII. And be it enacted, That it shall be lawful for the receiver at that part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and also for the owner or master of any such ship or vessel, and for the owners of any such goods or of any part thereof, and for any officer of the Customs, Coast Guard, or Excise, and other officer, and for all persons whomsoever employed or acting in aid of or in the assisting of any such receiver, officer, master, or owner as aforesaid, in the saving or recovering any such ship or vessel, or the cargo, stores, tackle, or other article belonging to the same, or the preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, to pass and repass, with their horses, carts, carriages, or servants, doing as little damage as possible, over any lands, pier, jetty, wharf, or landing place near to the part of the sea coast

officers, when any ship or vessel shall be in distress, empowered to summon men and ships to assist them:

Penalty for refusal.

As to persons empowered to give orders in case of a vessel stranded.

Examination on oath of ship's name, cargo, &c. before receiver, and a copy to be sent to receiver general.

Receiver entitled to 1*l*. for every examination.

Persons refusing to be examined to forfeit 50*l*.

Carriages allowed to pass over the lands near the coast for the preservation of wreck, &c.

where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of saving, recovering, and preserving any such ship or vessel, or goods or stores, or any boat, cables, timbers, spars, masts, cordage, or other tackle or article belonging to any ship or vessel, or for saving or otherwise assisting in preserving the lives of any persons, or for the taking possession of any wreck or goods or other article cast on shore, or found on shore or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands, pier, jetty, wharf, or landing place, and also to place any planks, timber, or any part of the wreck, or any goods or stores or other article removed or saved from any such ship or vessel, or any other wreck or goods or other article as aforesaid, upon any such land, pier, jetty, wharf, or landing place, for a reasonable time until they can be removed to some warehouse or safe place of deposit, doing as little damage as possible, and making compensation to the occupier of such land, pier, jetty, wharf, or landing place for any damage done by all or any of the means aforesaid, which compensation shall be a charge upon the wreck, goods, or other article in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled in any of the manners and within such times as the amount of salvage is herein directed to be ascertained and settled.

Compensation to land occupiers to be settled in the same manner as salvage.

Penalty on land occupiers refusing to allow carriages, &c. to pass over their lands.

XVIII. And be it enacted, That if any owner or occupier of any land or premises over which any person is authorized by this act to pass and repass for any of the purposes herein-before mentioned shall interrupt, impede, or hinder any such person from passing over his land or premises, with or without horses, carts, carriages, or servants, for the purposes herein-before mentioned or any of them, by locking his gates, or refusing upon request to open the same, or otherwise, or shall obstruct or hinder the placing any such plank, timber, part of a wreck, goods, stores, or other article upon his land, pier, jetty, wharf, or landing place, or shall prevent their remaining there for a reasonable time until the same can be removed to some warehouse or safe place of public deposit, such owner or occupier shall for every such offence forfeit and pay any sum not exceeding one hundred pounds.

Reasonable salvage to be allowed to persons saving ships or goods.

XIX. And be it enacted, That every person (except receivers under this act) who shall act or be employed in any way whatsoever in the saving or preserving of any ship or vessel in distress, or of any part of the cargo thereof, or of the life of any person on board the same, or of any wreck of the sea, or of any goods jetsam, flotsam, lagan, or derelict, or of any anchors, cables, tackle, stores, or materials which may have belonged to any ship or vessel, whether the said ship or vessel shall have been in distress or otherwise, and whether such person shall have so acted at the request of or on application by any person in authority, or by the master or owner of any ship or vessel, or otherwise, shall, with fourteen days after the service so performed, or within fourteen days after the owner or any other person shall have established his claim to any such article as aforesaid, be paid a reasonable reward or compensation by way of salvage for such service, by the commander, master, or other superior officer, mariners, or owner of the said ship or vessel, or their agent, or by the merchant whose ship, vessel, or cargo shall be so saved as aforesaid, or by the owner of the other articles herein-before mentioned, or other person claiming the same; and in default thereof the said ship or vessel, or any part of the cargo remaining on board thereof, so saved as aforesaid, shall remain in the custody of the High Court of Admiralty, and the said goods or other article (and also, until warrant issued from the High Court of Admiralty, the said ship, vessel, or cargo,) shall remain in the custody of the receiver or officer of the Customs until the person so acting or employed in the preservation of such ship or vessel, goods or other article as aforesaid, shall have been reasonably compensated for his said assistance and trouble, or reasonable security given for that purpose to the satisfaction of the said receiver or officer of the Customs, or High Court of Admiralty: provided always, that every receiver who shall act or be employed in the saving or preserving of any ship or vessel in distress which shall not become a droit of Admiralty shall be entitled to receive from the owner thereof the sum of two pounds for the first day, and the further sum of one pound for every subsequent day on which he shall be employed in the said service, if the said ship or vessel, together with the cargo thereof, shall be of or above the value of six hundred pounds, and the said receiver shall be entitled to a moiety of such respective sums if the said ship and cargo shall be under the value of six hundred pounds; and the said

Proviso.

ship or vessel shall be so detained as aforesaid until such sums shall have been paid to the said receiver.

XX. And be it enacted, That it shall be lawful for the said receiver general to make rules, and vary and alter the same, from time to time, as he may think proper, for regulating the rate of salvage to be paid by the receivers when any ship, vessel, boat, apparel, anchor, cable, tackle, stores, materials, goods, merchandize, or other article whatsoever shall not be proved to belong to any owner or other person, and shall be sold as droits of Admiralty in manner herein-before directed.

Receiver general may make rules for regulating salvage in certain cases.

XXI. And be it enacted, That if any person shall have rendered any service (except ordinary pilotage) in the saving or preserving of any ship or vessel in distress, or of the cargo thereof, or of the life of any person on board the same, or of any wreck of the sea, goods or other article herein-before mentioned, which shall not become droits of Admiralty, and the said person, and the master or owner of such ship or vessel, or his agent, or the owner of such article, or his agent, cannot agree upon the amount of salvage or compensation to be paid in respect of such service, then such person shall deliver to such master, owner, or agent a statement in writing, without prejudice to either party, of the amount of salvage or compensation claimed for such services, and (unless such salvage shall have been already paid by any receiver under the powers herein-before contained, or the claim thereto shall exceed the sum of two hundred pounds,) the matter or difference may be determined by any two justices of the peace residing at or near to the place where such service has been rendered, within forty-eight hours after such difference shall be referred to them for their determination thereof, and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of salvage to be paid within forty-eight hours after he shall be so nominated as aforesaid; and the said justices and such third person so nominated as aforesaid shall have full power and authority, whenever they see occasion, to examine the parties or their witnesses upon oath, which oath they or any one of them are and is hereby authorized to administer; and it shall be lawful for the person so to be nominated by the said justices, who shall decide on the amount of salvage to be paid as aforesaid, to demand and receive of and from the owner of the ship or vessel aforesaid, or of the article so saved as aforesaid, or of the salvors or their respective agents, a sum of money not exceeding two pounds two shillings; and such owner or his agent, or such salvors, at the discretion of the said justices or person appointed by them as aforesaid, are hereby required to pay the same to the person so nominated as aforesaid immediately after he shall have made his award or decision, and such sum of two pounds two shillings, and such amount of salvage, may be recovered as any penalty imposed by this act: Provided always, that when the salvage claim shall exceed the sum of two hundred pounds, then and in every such case the said matter or difference shall, in the event of no such agreement being made as aforesaid, either by reference to arbitration or otherwise, be determined exclusively by the High Court of Admiralty.

If owners and salvors disagree respecting salvage, two justices, or a person nominated by them, may determine, the same.

XXII. And be it enacted, That it shall be lawful for the Commissioners of Admiralty to nominate and appoint, in such ports or towns and for such districts as in their discretion they may think fit, three or more proper persons for each port, town, or district respectively, to be called Commissioners of Salvage, who, or any three or more of them, shall have power to adjust and determine any difference respecting salvage, in the same manner and in such cases as the justices herein-before in that respect mentioned, and also to nominate and appoint a proper person to act as secretary or registrar to the said Commissioners, and which secretary or registrar shall enter in a book kept for that purpose all the proceedings of such Commissioners, and also a copy of the awards which they shall have from time to time made; and the said Commissioners of Salvage, or any three or more of them, shall have the powers of examining on oath, and all other the same power and authorities as are herein-before given to the said justices, and to the person to be by them nominated as aforesaid; and such Commissioners of Salvage, or any three or more of them, who shall decide in any such case as aforesaid, and their secretary or registrar, may and they are hereby authorized to demand of and from the owner of any ship or vessel or of any article against whom any person may make any claim or demand for service rendered on preserving the same, and such owner or salvors is and are hereby required to pay, such fee or reward for deciding on every such claim as shall be regulated and appointed in that behalf by the Commissioners of the Treasury;

Admiralty may appoint Salvage Commissioners to determine differences where they think fit, and appoint a secretary, &c.

Commissioners empowered to examine on oath.

Parties dissatisfied may appeal to High Court of Admiralty, and goods to be restored to owners, on giving bail.

Receiver, where award by Commissioners of Salvage has been made, empowered to sell ship or goods, &c. in case of refusal of owner to comply with terms of award, or of neglect to appeal.

Commissioners or Justices to appoint to whom salvage to be paid for distribution between two or more persons.

Duties of distributor.

In case of delay or injustice, aggrieved parties to apply to

and the said Commissioners of Salvage, or any three or more of them, shall have the power to commit for contempt.

XXIII. And be it enacted, That in case any person so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the person against whom such claim is made, or his agent, shall be dissatisfied with such award and decision of the said justices or person so to be nominated by them as aforesaid, or of the said Commissioners of Salvage, it shall be lawful for either of them respectively, within ten days after such award shall have been made, but not afterwards, to notify to such justices, or to the said Commissioners of Salvage, as the case may be, his desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage or compensation, and thereupon such person shall forthwith proceed by taking out a monition within thirty days from the date of such award; but in such case the receiver or officer of the Customs in whose custody the ship, vessel, goods, or other article in respect of which such claim of salvage has been made shall have been detained as aforesaid is hereby required and empowered to release such ship or vessel, and to deliver to the owner or proprietor, or his agent, such goods or other article, upon the said owner or proprietor or his agent giving good and sufficient bail in double the amount of the sum awarded for salvage or compensation, or if no sum shall have been so awarded, then to such amount as the said receiver shall deem sufficient, and which bail the said receiver is hereby authorized to take and certify according to the form contained in the schedule (A.) hereunto annexed, and transmit the same without delay to the said receiver general, together with a true certificate in writing of the gross value of the article respecting which salvage shall be claimed, and also a copy of such proceedings and award, on unstamped paper, certified under the hand of the said receiver taking such bail as aforesaid, and the same shall be admitted by the said Court of Admiralty as evidence in the cause; and the said receiver shall for every such certificate be entitled to receive from the owner of such ship or vessel, goods or other article, or his agents, or from the proceeds of the sale thereof, the sum of one pound one shilling.

XXIV. Provided always, and it is hereby enacted, That after any such award has been made, either by the said justices or person nominated by them, or by the said Commissioners of Salvage as aforesaid, and the owner of such ship or vessel, goods or other article, in respect of which such award of salvage is made, or his agent, shall refuse or neglect either to pay the same, or to give notice of such appeal, or to take out such monition as aforesaid, it shall be lawful for the receiver, at or nearest to the place where such award has been made, and he is hereby required, within twenty days after the making of the said award, and on production of the same, to sell the property contained in such ship or vessel, or the said goods or other articles, as the case may be, or such and so many of the same as in his opinion will be sufficient to defray the salvage, and the costs and charges relating thereto, paying the surplus, if any, to the owner or owners thereof: Provided also, that in all cases which shall be decided by any justices of the peace, or their nominee, or by the said Commissioners of Salvage, the High Court of Admiralty shall only have jurisdiction as a Court of Appeal, in accordance with the provisions of this act, or for the purpose of enforcing payment of the sum awarded.

XXV. And be it enacted, That whenever any sum to be paid for any such services as aforesaid, either voluntarily or in consequence of any agreement, or of any arbitration, or of any award made by any such justices or by the said Commissioners of Salvage as aforesaid, or within the jurisdiction of the Cinque Ports, by any Commissioners, shall be distributable between two or more persons, such sum shall be paid to such person as shall be appointed by the justices or commissioners in and by their award, or by the arbitrator making any award, or under any agreement which may have been made, or in default of any such appointment, then to the master or owner of the boat, ship, or vessel having rendered the services, or his agent, or to some person nominated in writing by or on behalf of the majority of the persons among whom such sum is distributable; and every person to whom any such sum shall be paid shall, within three days after the same shall have been paid, or as soon after as may be, proceed to make allotment thereof among the several persons interested in the distribution thereof, and to give notice in the form contained in the schedule (B.) to this act annexed to each person of the whole sum so paid, and of the share thereof allotted to him; and within thirty days after the sum shall have been so paid, or within twenty-eight days after such notice shall have been given, and not afterwards, it shall be lawful for any person claiming a share of the said sum who shall think himself aggrieved, either by no allotment having been made, or by no notice thereof

having been given to him within ten days after the sum shall have been so paid, or by the insufficiency of the share allotted to him, or otherwise, to apply, if the share so allotted, or, if no share shall be so allotted, then if the share claimed by him shall be under twenty pounds, to the justices or commissioners who may have determined such salvage case, or within whose jurisdiction such salvage case may have occurred, who shall have full power to adjudge the due distribution of the sum so paid as aforesaid, and the shares of the different parties entitled thereto, which shares may then be recovered from the person to whom such sum shall have been so paid, in like manner as is hereby provided for the recovery of any penalty under this act; and if the share which shall be so allotted, or, if no share has been allotted, which shall be so claimed by the person so thinking himself aggrieved as aforesaid, shall amount to twenty pounds, then it shall be lawful for such person, within the said term of thirty days or the said term of twenty-eight days (but not afterwards), to apply to the Judge of the High Court of Admiralty, or his surrogate, for a monition against the person to whom the said sum has been so paid as aforesaid, to bring the said sum or any part thereof which shall appear not to have been duly distributed into the registry of the said Court, and appear, and abide the judgment of the said Court concerning the distribution thereof; and the Judge of the said Court, or his surrogate, shall, on due cause shown, issue such monition, and the said Court shall have jurisdiction to enforce the same, and to adjudge the due distribution of such sum accordingly; and in the case of an award the person by whom such award shall have been made shall, upon monition, send in without delay to the said Court a copy of the proceedings before him, and of the award, on unstamped paper, witnessed under his hand, and the same shall be admitted by the Court as evidence in the cause; and the amount so awarded, or such part as shall appear not to have been duly distributed, shall be paid to the parties suing out such monition, or distributed according to the judgment of the said Court.

Justices or Commissioners, or to High Court of Admiralty.

XXVI. And be it enacted, That whenever it shall appear that any sum which has been awarded or voluntarily agreed to be paid for salvage services shall have been duly paid by the master or owner of any ship, vessel, or goods to which such service shall have been so rendered, or his agent, to the appointee of the Justices or Commissioners or of the arbitrator making any award, or under any agreement, or in default of such appointment to the master or owner of the boat, ship, or vessel having rendered such services, or to the person nominated as aforesaid, as the case may be, then and in every such case any person claiming any share in such sum who may think himself aggrieved by the insufficiency of the share allotted to him, or otherwise, shall be precluded from enforcing such claim against the ship, vessel, or goods to which such services shall have been rendered, or the owner thereof: Provided always, that any party who shall claim to be entitled to any sum which shall remain undistributed in the hands of any person to whom the same may have been paid may, within twelve months after such payment, have the same remedies for the recovery of such sum from the person to whom the same shall have been paid as are herein-before provided respecting the recovery of shares in any sum paid for salvage services after adjudication of the distribution thereof.

After sum awarded for salvage services shall have been paid, persons feeling aggrieved by insufficiency of share precluded from enforcing claim against ship, &c. to which services were rendered.

XXVII. And be it enacted, That when any sum shall be paid for any such salvage as aforesaid, either voluntarily or in consequence of any award having been made in manner aforesaid, or security given for the payment thereof, and it shall appear that any ship or vessel, goods or other article, in respect of the saving of which such sum shall have been so paid or such security given, shall be detained in the custody of any officer of the Customs or of the High Court of Admiralty (as the case may be) as aforesaid, it shall not be lawful for the said officer or the said Court to permit such ship or vessel to depart, or to give up such goods or other article, until the production of a writing signed by the persons to whom such salvage shall be payable, or some or one of them, which shall contain a description of such ship or vessel, or goods or other article, together with an account of the sums that have been so paid, or of the security given for the same; and the said officer or the Court (as the case may be) shall send a copy of such writing to the nearest receiver, who shall transmit the same, or a copy thereof, to the nearest receiver general.

Account of sums received for salvage to be sent to receiver, and by him to receiver general.

XXVIII. And be it enacted, That if any person shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any boat, buoy, buoy rope, or mark, such person so offending shall, on being convicted of any such offence, be deemed and

Persons cutting away or defacing buoy ropes deemed guilty of felony.

adjudged to be guilty of felony, and shall be liable to be transported for any term not exceeding seven years, or imprisoned for any number of years not exceeding three, with or without hard labour, at the discretion of the Court in which such conviction shall have taken place.

Persons fraudulently purchasing anchors, &c. to be considered receivers of stolen goods.

XXIX. And be it enacted, That if any person shall knowingly or wilfully, and with intent to defraud the true owner thereof, or any person interested therein, purchase or receive any boat, anchor, cable, goods, or merchandise which may have been taken up, weighed, swept for, or taken possession of, if the provisions herein-before contained with regard to such articles shall not have been previously complied with, such person shall on conviction thereof be deemed guilty of receiving stolen goods, knowing the same to be stolen, and shall be punished accordingly.

Masters of ships finding vessels, anchors, &c. to make entry in log book, and report to receiver general, and on their return or arrival to deliver the articles to the nearest receiver.

XXX. And be it enacted, That in case the master, mate, crew, or passenger of any ship or vessel shall find or take in tow or on board of such ship or vessel, any vessel, boat, anchor, cable, or any goods, merchandise, or other article, or shall receive any vessel, boat, anchor, cable, or any goods, merchandise, or other article, from any other person who may have found the same, knowing the same to have been so found, the master, mate, or other person having the command of such ship or vessel shall, on the return or arrival of such vessel to any port in the United Kingdom, place the said article at the disposal of the receiver in or nearest to such port at which he shall first arrive, and within twenty-four hours of his arrival, with a report in writing, containing an accurate description of the said articles, and the marks, if any, thereon, and the time when, and the bearings and distances and other minute descriptions of the place where the same were found or taken on board; and such receiver is hereby required to transmit such report to the secretary of the committee of Lloyd's aforesaid, to be placed by him for inspection, in like manner as herein-before provided with respect to copies of other reports; and if the said article shall not be claimed by the owner thereof, or his agent, within twelve calendar months after such report shall be transmitted to the said secretary, the same shall be sold and disposed of by the said receiver, and the proceeds of such sale remain and be dealt with in the manner herein-before directed with respect to other unclaimed articles; and if the master of such ship or vessel, or such other person, shall not report or place at the disposal of the said receiver, such vessel, boat, anchor, cable, goods, merchandise, or other article, according to the provisions of this act, he shall for every such offence forfeit all claim to salvage, and on being thereof convicted before any justice of the peace forfeit and pay one hundred pounds, and shall also forfeit and pay double the value of any such article to the owner thereof, if claimed, or to her Majesty, if the same become droits of Admiralty, which double value may be recovered in the same manner as a penalty under this act.

Penalty on defaulters, 100*l*.

Pilots and others selling vessels, anchors, &c. in foreign countries guilty of felony.

XXXI. And be it enacted, That every person who shall convey, take, or tow to any foreign port or place any vessel, boat, anchor, chain, cable, or other article which may have been so found, weighed, swept for, received, or taken as aforesaid, and there sell or otherwise dispose of the same, shall be guilty of felony, and shall be transported for any term not exceeding seven years.

Penalty on dealers in marine stores not having their names on their storehouses, or cutting up cables without a permit from a receiver.

XXXII. And be it enacted, That all persons who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names, with the words "Dealer in marine stores," painted distinctly in letters of not less than six inches in length upon the front of all their storehouses, warehouses, and other places of deposit for such goods, and in default of their so doing they shall, on conviction before any justice of the peace or magistrate of any jurisdiction where such storehouse, warehouse, or depôt shall be, forfeit and pay a sum not exceeding twenty pounds; and it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable exceeding five fathoms in length, or uncant, untwine, or unlay the same into junk or paper stuff, on any pretence whatsoever, without first obtaining a permit from a justice of the peace, or the receiver residing nearest to the residence of such dealer, which permit shall not be granted unless a declaration shall have been made before a justice of the peace that the cable or other articles so intended to be cut up had been bona fide purchased, and without fraud, by the party so intending to cut up the same, and without any knowledge or suspicion on his part that the same had been dishonestly come by, and in which declaration shall also be specified the peculiar quality and description of such cable or other article, and the name of the seller thereof; which declaration shall be recited and set forth at length upon the permit thereupon granted, on pain of forfeiting for the first offence any sum not exceeding twenty pounds, and for the second or further offence any sum not exceeding fifty pounds.

XXXIII. And be it enacted, That it shall not be lawful for any dealer in marine stores, or any person employed by him, to purchase anchors, cables, sails, or old junk or iron, or marine stores of any kind or description whatsoever, of or from any person who shall not have attained the age of fourteen years, on pain of forfeiting for the first offence any sum not exceeding five pounds, and for the second or further offence any sum not exceeding twenty pounds.

XXXIV. And be it enacted, That for the more effectual prevention of such frauds all dealers in such marine stores as aforesaid shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such old marine stores as shall be by them from time to time bought or otherwise obtained, containing a true account and description of the times when the same were so respectively bought or otherwise obtained by them, and of the names and places of abode of the respective sellers thereof, or of the parties from whom the same shall have been obtained; and before any person who shall obtain such permit as herein-before mentioned for the cutting up of any such cable or other article shall proceed to cut up the same by virtue thereof, there shall be published, by the space of one week at least before the cutting up of the same, one or more advertisements in some public newspaper printed nearest to the storehouse, warehouse, or depôt where the article shall be deposited, notifying that such party had obtained such permit for the purpose of cutting up such cable or other article, and of such kind and quality as therein described, and also specifying the place where such articles are deposited; whereupon it shall be lawful for every person who may have just cause to suspect that such articles are his property, and shall have verified upon oath the fact of such suspicion before any justice of the peace or magistrate residing near the said storehouse, warehouse, or depôt, by warrant for that purpose thereupon granted, to require of and from such dealer who shall have so advertised as aforesaid the production and examination of the book of entries hereby required to be kept, and to inspect and examine the cables and other articles described in such permit; and in case any such dealer, when so required as aforesaid, shall neglect or refuse to produce such book of entries, or shall neglect to keep any such book of entries, or shall refuse to permit such inspection or examination as aforesaid, or shall, after obtaining such permit for the cutting up of any such cable or other article, or before cutting up the same, neglect to publish such advertisement as aforesaid, he shall for every such first offence forfeit and pay any sum not exceeding twenty pounds, and for every such second or further offence any sum not exceeding fifty pounds.

XXXV. And be it enacted, That every manufacturer of anchors and kedge anchors shall place his name or initials, together with a progressive number, and also the weight of every anchor, in legible characters upon the crown and also upon the shank under the stock of each anchor respectively which he shall manufacture; and in case any such manufacturer shall neglect to place such name, number, or weight in the manner herein-before directed and required, he shall for every such neglect forfeit and pay any sum not exceeding five pounds.

XXXVI. And be it enacted, That any penalty imposed by this act may be recovered by information or action of debt in any of her Majesty's Courts, or by information or complaint before any justice of the peace or magistrate of any jurisdiction residing near the place in which the offence has been committed for which such penalty is sought to be recovered, or where the offender may at any time happen to be, and (except where the contrary is so expressed) one half of the said penalties shall go to the informer, and the other half to the receiver general of droits of Admiralty, to be applied by him in like manner as the proceeds arising from such droits, any thing in an act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or in any other act of parliament, to the contrary notwithstanding; and in case any of the said penalties, on conviction by any justice of the peace or magistrate, shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may (except in the case herein-after mentioned) be levied, by warrant under the hand and seal of such justice or magistrate, upon the goods and chattels of any such offender; and in case no sufficient distress shall be found then every such offender shall and may be committed by any justice or magistrate as aforesaid to gaol, with or without hard labour, in case of any first offence for any period not exceeding six calendar months, and in case of any second or further offence for any period not exceeding twelve calendar months, unless the said penalty and the charges shall be sooner paid; and for the more easy and speedy conviction of such offenders, every such justice or magistrate before whom any person shall be convicted of any offence against this act shall

Penalty on dealers in marine stores purchasing anchors, &c. from persons under 14 years of age.

Dealers to keep an account of old stores bought, to advertise before cutting up cordage, and to allow an inspection of their books.

Penalty for neglect or refusal.

Manufacturers to place marks on anchors and kedge anchors.

Penalty for neglect.

Recovery of penalties.

5 & 6 W. 4. c. 76.

claimed by the owner within twelve months, lords of manors, &c. may make good their claim within one month following.

in the custody of any receiver in manner aforesaid, and shall not be legally claimed by the owner thereof within the aforesaid space of twelve calendar months, and any lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, having given due notice of his or her claim as herein-before required, or his, her, or their bailiff, reeve, or other officer, shall within the space of thirty days after the expiration of the said term of twelve calendar months make it appear to the said receiver, by the production of satisfactory evidence, that such article was found within the manor or district in respect of which such claim is made, it shall be lawful for the receiver and he is hereby required and enjoined to deliver up such article to the said lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, or his, her, or their bailiff, reeve, or other officer, on payment of the duties, and all charges and expences attending the care or removal of the said article, together with a reasonable compensation for salvage, and also on payment to the said receiver of a sum after the rate of five per centum on the value of the article, but in no case, whatever may be the value of the articles, shall such per-centage exceed the sum of fifty pounds: provided always, that if the receiver shall determine against the right of any person claiming to be the owner of any such article as aforesaid, or against the evidence produced by any lord or lady of a manor, or patentee or grantee of the Crown, or other person or body corporate, as to the finding of any such article as aforesaid, he shall be bound, at the request of the party against whom he shall have determined respectively, to signify such determination in writing, with the date thereof and the reasons for the same.

Wreck, &c. not claimed either by owner or lord of the manor to be sold as droits of Admiralty.

Goods deemed perishable or of small value may be sold immediately.

XI. And be it enacted, That when no claim to any article in the custody of any receiver or officer of Customs as aforesaid shall be established, either by the owner thereof, or by any lord or lady of a manor, or patentee or grantee of the Crown, or other such person or body corporate as aforesaid, within the said respective periods as aforesaid, then the said article shall be deemed and taken to be droits of Admiralty, and shall be sold by the said receiver, without any legal process whatsoever, and the net proceeds thereof, after the payment of salvage, when the same shall be payable, and of the other charges, shall be forthwith transmitted by him to the said receiver general: provided always, that when any article in the custody of any receiver or officer of Customs as aforesaid shall be of so perishable a nature, or so much injured or damaged, that the same cannot, in his opinion, be kept, or if the value thereof shall not be sufficient to defray the charge of warehousing, then and in every such case it shall be lawful for the said receiver to sell the same before the expiration of the periods herein-before mentioned, and the money raised by such sale, after defraying the salvage and other expences thereof, shall be transmitted by him to the said receiver general, and remain in the hands of the said receiver general, to abide and be subject and liable to the claims of all persons, in like manner as the article itself would remain and be subject and liable to if remaining unsold: provided also, that it shall be lawful for any receiver, and he is hereby authorized, if he in his discretion think fit, when he shall have in his custody any article which shall not appear to him to be of greater value than five pounds, to sell the same before the expiration of the said periods, and forthwith pay salvage to the party claiming the same, and to transmit the remainder of the proceeds of such sale in the manner herein-before provided; but in every such last-mentioned case the salvor shall not be entitled to more than one third of the net produce of such sale.

Vice Admirals of counties, &c. not to interfere with wreck, &c.

Where salvage insufficient, Lords of Treasury, on application by receiver general or Lord Warden of Cinque Ports, may allow a sum for salvage.

XII. And be it enacted, That no vice admiral or deputy vice admiral of any county, or any agent of the same, shall as such henceforth receive, take, seize, or in any manner interfere with any wreck of the sea, or any other of the goods or articles herein-before mentioned.

Receivers, justices, &c. or custom house

XIII. And be it enacted, That as often as it shall happen, upon the sale of articles as herein-before directed, that after the payment of duties and other necessary expences there shall not be left a sum sufficient to defray the salvage, it shall be lawful for the receiver, or, if the same shall happen within the jurisdiction of the Lord Warden of the Cinque Ports, the deputy serjeant or other officer of the said lord warden in whose respective custody the articles shall have been, to send a report, stating the circumstances, the said receiver to the said receiver general, and the said deputy serjeant or other officer to the said lord warden, as the case may be; and the commissioners of her Majesty's Treasury, on receiving an application thereupon from the said receiver general or from the said lord warden, as the case may be, may and they are hereby authorized to allow such sum to be paid out of her Majesty's Exchequer by way of salvage as they shall deem sufficient.

XIV. And be it enacted, That when any ship or vessel whatsoever shall be in distress, or in danger of being stranded or run on shore, or shall be stranded or



run on shore, every receiver, as well as all justices of the peace, and also all mayors, bailiffs, and other officers of corporations and port towns, and all constables, head-boroughs, tythingmen, and officers of the Customs and Excise, shall summon and call together as many men as shall be thought necessary to the assistance and preservation of such ship or vessel and its cargo, or for the saving human life, and if there shall be any ship or vessel belonging to any of her Majesty's subjects, or any waggons, carts, and horses, near the place where such ship or vessel is in distress or danger as aforesaid, the said receiver and other officers herein-before mentioned, or any of them, are hereby required and empowered to demand of the superior officer of such ship or vessel assistance by boats, or such hands as can be conveniently spared, and to demand the use of any waggons, carts, and horses of the owner or person having the charge thereof, for the service and preservation of the said ship or vessel in distress as aforesaid, and her cargo, or for the saving of human life; and every such superior officer, owner, or person refusing or neglecting to comply immediately with such demand shall for every such refusal or neglect forfeit and pay any sum not exceeding one hundred pounds.

XV. And be it enacted, That for the prevention of confusion among persons assembled to save any ship or vessel in distress as aforesaid, or any of the goods or effects belonging thereto, all persons so assembled shall conform, in the first place, to the orders of the master or owner or officer in charge of the said ship or vessel in distress, and in the next place to those of the receiver, and for want of their presence to those of the officers herein-after mentioned, in the following subordination, as any of such officers shall be present; (that is to say,) first the officers of Customs or Coast Guard, then those of the Excise, then of the sheriff or his deputy, then any justice of the peace, then any mayor or chief magistrate of any corporation, then any coroner, then any chief constable, then any petty constable or peace officer; and any person whomsoever acting knowingly or wilfully contrary to such orders shall, on conviction before one justice of the peace, forfeit and pay any sum not exceeding fifty pounds.

XVI. And be it enacted, That any receiver, or in his absence any justice of the peace, shall as soon as conveniently may be examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship or vessel which may be or may have been in distress, or others who may be able to give any account thereof, or of the cargo or stores thereof, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer and owners thereof, and of the owner of the said cargo, and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress, and of the services rendered, and as to any other matter or circumstance relating to the said ship or cargo, or any of the stores thereof, as the said receiver or justice may think fit and necessary; and the said receiver or justice shall take the said examination down in writing, and shall make two copies of the same, the one of which he shall send to the said receiver general, and the other to the secretary of the committee of Lloyd's aforesaid, and the said copy shall be placed by the said secretary in some conspicuous situation, in like manner as herein-before directed with respect to other reports so to be made to the said secretary as aforesaid; and for every such examination by a receiver he shall be entitled to receive from the owner of the said vessel or cargo, or out of the produce of the sale thereof, the sum of one pound; and it shall be lawful for the said receiver, or for any officer of the Customs, at the request in writing of the said receiver, to detain such vessel or cargo until the said sum be paid: provided always, that if any person belonging to the said ship or vessel, or otherwise, shall refuse to be so examined by the said receiver or justice as aforesaid, he shall for every such refusal forfeit and pay any sum not exceeding fifty pounds.

XVII. And be it enacted, That it shall be lawful for the receiver at that part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and also for the owner or master of any such ship or vessel, and for the owners of any such goods or of any part thereof, and for any officer of the Customs, Coast Guard, or Excise, and other officer, and for all persons whomsoever employed or acting in aid of or in the assisting of any such receiver, officer, master, or owner as aforesaid, in the saving or recovering any such ship or vessel, or the cargo, stores, tackle, or other article belonging to the same, or the preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, to pass and repass, with their horses, carts, carriages, or servants, doing as little damage as possible, over any lands, pier, jetty, wharf, or landing place near to the part of the sea coast

officers, when any ship or vessel shall be in distress, empowered to summon men and ships to assist them:

Penalty for refusal.

As to persons empowered to give orders in case of a vessel stranded.

Examination on oath of ship's name, cargo, &c. before receiver, and a copy to be sent to receiver general.

Receiver entitled to 1*l*. for every examination.

Persons refusing to be examined to forfeit 50*l*.

Carriages allowed to pass over the lands near the coast for the preservation of wreck, &c.

where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of saving, recovering, and preserving any such ship or vessel, or goods or stores, or any boat, cables, timbers, spars, masts, cordage, or other tackle or article belonging to any ship or vessel, or for saving or otherwise assisting in preserving the lives of any persons, or for the taking possession of any wreck or goods or other article cast on shore, or found on shore or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands, pier, jetty, wharf, or landing place, and also to place any planks, timber, or any part of the wreck, or any goods or stores or other article removed or saved from any such ship or vessel, or any other wreck or goods or other article as aforesaid, upon any such land, pier, jetty, wharf, or landing place, for a reasonable time until they can be removed to some warehouse or safe place of deposit, doing as little damage as possible, and making compensation to the occupier of such land, pier, jetty, wharf, or landing place for any damage done by all or any of the means aforesaid, which compensation shall be a charge upon the wreck, goods, or other article in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled in any of the manners and within such times as the amount of salvage is herein directed to be ascertained and settled.

Compensation to land occupiers to be settled in the same manner as salvage.

Penalty on land occupiers refusing to allow carriages, &c. to pass over their lands.

Reasonable salvage to be allowed to persons saving ships or goods.

Proviso.

XVIII. And be it enacted, That if any owner or occupier of any land or premises over which any person is authorized by this act to pass and repass for any of the purposes herein-before mentioned shall interrupt, impede, or hinder any such person from passing over his land or premises, with or without horses, carts, carriages, or servants, for the purposes herein-before mentioned or any of them, by locking his gates, or refusing upon request to open the same, or otherwise, or shall obstruct or hinder the placing any such plank, timber, part of a wreck, goods, stores, or other article upon his land, pier, jetty, wharf, or landing place, or shall prevent their remaining there for a reasonable time until the same can be removed to some warehouse or safe place of public deposit, such owner or occupier shall for every such offence forfeit and pay any sum not exceeding one hundred pounds.

XIX. And be it enacted, That every person (except receivers under this act) who shall act or be employed in any way whatsoever in the saving or preserving of any ship or vessel in distress, or of any part of the cargo thereof, or of the life of any person on board the same, or of any wreck of the sea, or of any goods jetsam, flotsam, lagan, or derelict, or of any anchors, cables, tackle, stores, or materials which may have belonged to any ship or vessel, whether the said ship or vessel shall have been in distress or otherwise, and whether such person shall have so acted at the request of or on application by any person in authority, or by the master or owner of any ship or vessel, or otherwise, shall, with fourteen days after the service so performed, or within fourteen days after the owner or any other person shall have established his claim to any such article as aforesaid, be paid a reasonable reward or compensation by way of salvage for such service, by the commander, master, or other superior officer, mariners, or owner of the said ship or vessel, or their agent, or by the merchant whose ship, vessel, or cargo shall be so saved as aforesaid, or by the owner of the other articles herein-before mentioned, or other person claiming the same; and in default thereof the said ship or vessel, or any part of the cargo remaining on board thereof, so saved as aforesaid, shall remain in the custody of the High Court of Admiralty, and the said goods or other article (and also, until warrant issued from the High Court of Admiralty, the said ship, vessel, or cargo,) shall remain in the custody of the receiver or officer of the Customs until the person so acting or employed in the preservation of such ship or vessel, goods or other article as aforesaid, shall have been reasonably compensated for his said assistance and trouble, or reasonable security given for that purpose to the satisfaction of the said receiver or officer of the Customs, or High Court of Admiralty: provided always, that every receiver who shall act or be employed in the saving or preserving of any ship or vessel in distress which shall not become a droît of Admiralty shall be entitled to receive from the owner thereof the sum of two pounds for the first day, and the further sum of one pound for every subsequent day on which he shall be employed in the said service, if the said ship or vessel, together with the cargo thereof, shall be of or above the value of six hundred pounds, and the said receiver shall be entitled to a moiety of such respective sums if the said ship and cargo shall be under the value of six hundred pounds; and the said

ship or vessel shall be so detained as aforesaid until such sums shall have been paid to the said receiver.

XX. And be it enacted, That it shall be lawful for the said receiver general to make rules, and vary and alter the same, from time to time, as he may think proper, for regulating the rate of salvage to be paid by the receivers when any ship, vessel, boat, apparel, anchor, cable, tackle, stores, materials, goods, merchandize, or other article whatsoever shall not be proved to belong to any owner or other person, and shall be sold as droits of Admiralty in manner herein-before directed.

Receiver general may make rules for regulating salvage in certain cases.

XXI. And be it enacted, That if any person shall have rendered any service (except ordinary pilotage) in the saving or preserving of any ship or vessel in distress, or of the cargo thereof, or of the life of any person on board the same, or of any wreck of the sea, goods or other article herein-before mentioned, which shall not become droits of Admiralty, and the said person, and the master or owner of such ship or vessel, or his agent, or the owner of such article, or his agent, cannot agree upon the amount of salvage or compensation to be paid in respect of such service, then such person shall deliver to such master, owner, or agent a statement in writing, without prejudice to either party, of the amount of salvage or compensation claimed for such services, and (unless such salvage shall have been already paid by any receiver under the powers herein-before contained, or the claim thereto shall exceed the sum of two hundred pounds,) the matter or difference may be determined by any two justices of the peace residing at or near to the place where such service has been rendered, within forty-eight hours after such difference shall be referred to them for their determination thereof, and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of salvage to be paid within forty-eight hours after he shall be so nominated as aforesaid; and the said justices and such third person so nominated as aforesaid shall have full power and authority, whenever they see occasion, to examine the parties or their witnesses upon oath, which oath they or any one of them are and is hereby authorized to administer; and it shall be lawful for the person so to be nominated by the said justices, who shall decide on the amount of salvage to be paid as aforesaid, to demand and receive of and from the owner of the ship or vessel aforesaid, or of the article so saved as aforesaid, or of the salvors or their respective agents, a sum of money not exceeding two pounds two shillings; and such owner or his agent, or such salvors, at the discretion of the said justices or person appointed by them as aforesaid, are hereby required to pay the same to the person so nominated as aforesaid immediately after he shall have made his award or decision, and such sum of two pounds two shillings, and such amount of salvage, may be recovered as any penalty imposed by this act: Provided always, that when the salvage claim shall exceed the sum of two hundred pounds, then and in every such case the said matter or difference shall, in the event of no such agreement being made as aforesaid, either by reference to arbitration or otherwise, be determined exclusively by the High Court of Admiralty.

If owners and salvors disagree respecting salvage, two justices, or a person nominated by them, may determine the same.

XXII. And be it enacted, That it shall be lawful for the Commissioners of Admiralty to nominate and appoint, in such ports or towns and for such districts as in their discretion they may think fit, three or more proper persons for each port, town, or district respectively, to be called Commissioners of Salvage, who, or any three or more of them, shall have power to adjust and determine any difference respecting salvage, in the same manner and in such cases as the justices herein-before in that respect mentioned, and also to nominate and appoint a proper person to act as secretary or registrar to the said Commissioners, and which secretary or registrar shall enter in a book kept for that purpose all the proceedings of such Commissioners, and also a copy of the awards which they shall have from time to time made; and the said Commissioners of Salvage, or any three or more of them, shall have the powers of examining on oath, and all other the same power and authorities as are herein-before given to the said justices, and to the person to be by them nominated as aforesaid; and such Commissioners of Salvage, or any three or more of them, who shall decide in any such case as aforesaid, and their secretary or registrar, may and they are hereby authorized to demand of and from the owner of any ship or vessel or of any article against whom any person may make any claim or demand for service rendered on preserving the same, and such owner or salvors is and are hereby required to pay, such fee or reward for deciding on every such claim as shall be regulated and appointed in that behalf by the Commissioners of the Treasury;

Admiralty may appoint Salvage Commissioners to determine differences where they think fit, and appoint a secretary, &c.

Commissioners empowered to examine on oath.

and the said Commissioners of Salvage, or any three or more of them, shall have the power to commit for contempt.

Parties dissatisfied may appeal to High Court of Admiralty, and goods to be restored to owners, on giving bail.

XXIII. And be it enacted, That in case any person so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the person against whom such claim is made, or his agent, shall be dissatisfied with such award and decision of the said justices or person so to be nominated by them as aforesaid, or of the said Commissioners of Salvage, it shall be lawful for either of them respectively, within ten days after such award shall have been made, but not afterwards, to notify to such justices, or to the said Commissioners of Salvage, as the case may be, his desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage or compensation, and thereupon such person shall forthwith proceed by taking out a monition within thirty days from the date of such award; but in such case the receiver or officer of the Customs in whose custody the ship, vessel, goods, or other article in respect of which such claim of salvage has been made shall have been detained as aforesaid is hereby required and empowered to release such ship or vessel, and to deliver to the owner or proprietor, or his agent, such goods or other article, upon the said owner or proprietor or his agent giving good and sufficient bail in double the amount of the sum awarded for salvage or compensation, or if no sum shall have been so awarded, then to such amount as the said receiver shall deem sufficient, and which bail the said receiver is hereby authorized to take and certify according to the form contained in the schedule (A.) hereunto annexed, and transmit the same without delay to the said receiver general, together with a true certificate in writing of the gross value of the article respecting which salvage shall be claimed, and also a copy of such proceedings and award, on unstamped paper, certified under the hand of the said receiver taking such bail as aforesaid, and the same shall be admitted by the said Court of Admiralty as evidence in the cause; and the said receiver shall for every such certificate be entitled to receive from the owner of such ship or vessel, goods or other article, or his agents, or from the proceeds of the sale thereof, the sum of one pound one shilling.

Receiver, where award by Commissioners of Salvage has been made, empowered to sell ship or goods, &c. in case of refusal of owner to comply with terms of award, or of neglect to appeal.

XXIV. Provided always, and it is hereby enacted, That after any such award has been made, either by the said justices or person nominated by them, or by the said Commissioners of Salvage as aforesaid, and the owner of such ship or vessel, goods or other article, in respect of which such award of salvage is made, or his agent, shall refuse or neglect either to pay the same, or to give notice of such appeal, or to take out such monition as aforesaid, it shall be lawful for the receiver, at or nearest to the place where such award has been made, and he is hereby required, within twenty days after the making of the said award, and on production of the same, to sell the property contained in such ship or vessel, or the said goods or other articles, as the case may be, or such and so many of the same as in his opinion will be sufficient to defray the salvage, and the costs and charges relating thereto, paying the surplus, if any, to the owner or owners thereof: Provided also, that in all cases which shall be decided by any justices of the peace, or their nominee, or by the said Commissioners of Salvage, the High Court of Admiralty shall only have jurisdiction as a Court of Appeal, in accordance with the provisions of this act, or for the purpose of enforcing payment of the sum awarded.

Commissioners or Justices to appoint to whom salvage to be paid for distribution between two or more persons.

XXV. And be it enacted, That whenever any sum to be paid for any such services as aforesaid, either voluntarily or in consequence of any agreement, or of any arbitration, or of any award made by any such justices or by the said Commissioners of Salvage as aforesaid, or within the jurisdiction of the Cinque Ports, by any Commissioners, shall be distributable between two or more persons, such sum shall be paid to such person as shall be appointed by the justices or commissioners in and by their award, or by the arbitrator making any award, or under any agreement which may have been made, or in default of any such appointment, then to the master or owner of the boat, ship, or vessel having rendered the services, or his agent, or to some person nominated in writing by or on behalf of the majority of the persons among whom such sum is distributable; and every person to whom any such sum shall be paid shall, within three days after the same shall have been paid, or as soon after as may be, proceed to make allotment thereof among the several persons interested in the distribution thereof, and to give notice in the form contained in the schedule (B.) to this act annexed to each person of the whole sum so paid, and of the share thereof allotted to him; and within thirty days after the sum shall have been so paid, or within twenty-eight days after such notice shall have been given, and not afterwards, it shall be lawful for any person claiming a share of the said sum who shall think himself aggrieved, either by no allotment having been made, or by no notice thereof

Duties of distributor.

In case of delay or injustice, aggrieved parties to apply to

having been given to him within ten days after the sum shall have been so paid, or by the insufficiency of the share allotted to him, or otherwise, to apply, if the share so allotted, or, if no share shall be so allotted, then if the share claimed by him shall be under twenty pounds, to the justices or commissioners who may have determined such salvage case, or within whose jurisdiction such salvage case may have occurred, who shall have full power to adjudge the due distribution of the sum so paid as aforesaid, and the shares of the different parties entitled thereto, which shares may then be recovered from the person to whom such sum shall have been so paid, in like manner as is hereby provided for the recovery of any penalty under this act; and if the share which shall be so allotted, or, if no share has been allotted, which shall be so claimed by the person so thinking himself aggrieved as aforesaid, shall amount to twenty pounds, then it shall be lawful for such person, within the said term of thirty days or the said term of twenty-eight days (but not afterwards), to apply to the Judge of the High Court of Admiralty, or his surrogate, for a monition against the person to whom the said sum has been so paid as aforesaid, to bring the said sum or any part thereof which shall appear not to have been duly distributed into the registry of the said Court, and appear, and abide the judgment of the said Court concerning the distribution thereof; and the Judge of the said Court, or his surrogate, shall, on due cause shown, issue such monition, and the said Court shall have jurisdiction to enforce the same, and to adjudge the due distribution of such sum accordingly; and in the case of an award the person by whom such award shall have been made shall, upon monition, send in without delay to the said Court a copy of the proceedings before him, and of the award, on unstamped paper, witnessed under his hand, and the same shall be admitted by the Court as evidence in the cause; and the amount so awarded, or such part as shall appear not to have been duly distributed, shall be paid to the parties suing out such monition, or distributed according to the judgment of the said Court.

Justices or Commissioners, or to High Court of Admiralty.

XXVI. And be it enacted, That whenever it shall appear that any sum which has been awarded or voluntarily agreed to be paid for salvage services shall have been duly paid by the master or owner of any ship, vessel, or goods to which such service shall have been so rendered, or his agent, to the appointee of the Justices or Commissioners or of the arbitrator making any award, or under any agreement, or in default of such appointment to the master or owner of the boat, ship, or vessel having rendered such services, or to the person nominated as aforesaid, as the case may be, then and in every such case any person claiming any share in such sum who may think himself aggrieved by the insufficiency of the share allotted to him, or otherwise, shall be precluded from enforcing such claim against the ship, vessel, or goods to which such services shall have been rendered, or the owner thereof: Provided always, that any party who shall claim to be entitled to any sum which shall remain undistributed in the hands of any person to whom the same may have been paid may, within twelve months after such payment, have the same remedies for the recovery of such sum from the person to whom the same shall have been paid as are herein-before provided respecting the recovery of shares in any sum paid for salvage services after adjudication of the distribution thereof.

After sum awarded for salvage services shall have been paid, persons feeling aggrieved by insufficiency of share precluded from enforcing claim against ship, &c. to which services were rendered.

XXVII. And be it enacted, That when any sum shall be paid for any such salvage as aforesaid, either voluntarily or in consequence of any award having been made in manner aforesaid, or security given for the payment thereof, and it shall appear that any ship or vessel, goods or other article, in respect of the saving of which such sum shall have been so paid or such security given, shall be detained in the custody of any officer of the Customs or of the High Court of Admiralty (as the case may be) as aforesaid, it shall not be lawful for the said officer or the said Court to permit such ship or vessel to depart, or to give up such goods or other article, until the production of a writing signed by the persons to whom such salvage shall be payable, or some or one of them, which shall contain a description of such ship or vessel, or goods or other article, together with an account of the sums that have been so paid, or of the security given for the same; and the said officer or the Court (as the case may be) shall send a copy of such writing to the nearest receiver, who shall transmit the same, or a copy thereof, to the nearest receiver general.

Account of sums received for salvage to be sent to receiver, and by him to receiver general.

XXVIII. And be it enacted, That if any person shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any boat, buoy, buoy rope, or mark, such person so offending shall, on being convicted of any such offence, be deemed and

Persons cutting away or defacing buoy ropes deemed guilty of felony.

man, navigate, equip, despatch, use, employ, let or take to freight or on hire, or contract for the fitting out, manning, navigating, equipping, despatching, using, employing, letting or taking to freight or on hire, any ship, vessel, or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, such ship, vessel, or boat, together with all her boats, guns, tackle, apparel, and furniture, and together likewise with all property, goods, or effects found on board, belonging to the owner or owners, part owner or part owners of any such ship, vessel, or boat, shall become forfeited, and may and shall be seized and prosecuted as herein-after is mentioned and provided.

Penalty for  
embarking  
capital in the  
slave trade.

V. And be it further enacted, That (except in such special cases or for such special purposes as are in and by this act permitted) if any persons shall knowingly and wilfully lend or advance, or become security for the loan or advance, or shall contract for the lending or advancing, or becoming security for the loan or advance of money, goods, or effects, employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall forfeit and pay for every such offence double the value of all the money, goods, and effects so lent, advanced, or secured, or so contracted for as aforesaid, to be recovered and applied as is herein-after mentioned and provided.

Penalty for  
guaranteeing  
slave adventures.

VI. And be it further enacted, That (except in such special cases or for such special purposes as are in and by this act permitted) if any persons shall knowingly and wilfully become guarantee or security, or contract for the becoming guarantee or security for agents employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, or shall in any other manner engage or contract to engage directly or indirectly therein, as a partner, agent, or otherwise, then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall forfeit and pay for every such offence double the value of all the money, goods, and effects so by them secured or contracted so to be as aforesaid, to be recovered and applied as is herein-after mentioned and provided.

Penalty for  
shipping goods  
to be employed  
in the slave  
trade.

VII. And be it further enacted, That (except in such special cases or for such special purposes as are in and by this act permitted) if any person shall knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for the shipping, transshipping, lading, receiving, or putting on board of any ship, vessel, or boat, any money, goods, or effects to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall forfeit and pay for every such offence double the value of all the money, goods, and effects so shipped, transhipped, laden, received, or put on board, or contracted so to be as aforesaid, to be recovered and applied as is herein-after mentioned and provided.

Penalty for  
insuring slave  
adventures.

VIII. And be it further enacted, That (except in such special cases or for such special purposes as are in and by this act permitted) if any person shall knowingly and wilfully insure or contract for the insuring of any slaves, or any property or other subject matter engaged or employed or intended to be engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall forfeit and pay for every such offence the sum of one hundred pounds of lawful money of Great Britain for every such insurance or contract for the same, and also treble the amount of the premium of any such insurance or contract for the same, the one moiety thereof to the use of his Majesty, his heirs and successors, and the other moiety to the use of any person who shall inform, sue and prosecute for the same, and every such insurance shall be absolutely null and void.

Dealing in  
slaves on the  
high seas, &c.  
to be deemed  
piracy.

IX. And be it further enacted, That if any subject or subjects of his Majesty, or any person or persons residing or being within any of the dominions, forts, settlements, factories, or territories, now or hereafter belonging to his Majesty, or being in his Majesty's occupation or possession, or under the government of the United Company of Merchants of England trading to the East Indies, shall, except in such cases as are in and by this act permitted, after the first day of January one thousand eight hundred and twenty-five, upon the high seas, or in

any haven, river, creek, or place where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove, or aid or assist in carrying away, conveying, or removing, any person or persons as a slave or slaves, or for the purpose of his, her, or their being imported or brought, as a slave or slaves, into any island, colony, country, territory, or place whatsoever, or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves, or shall after the said first day of January one thousand eight hundred and twenty-five, except in such cases as are in and by this act permitted, upon the high seas, or within the jurisdiction aforesaid, knowingly and wilfully ship, embark, receive, detain, or confine, or assist in shipping, embarking, receiving, detaining, or confining on board any ship, vessel, or boat, any person or persons for the purpose of his, her, or their being carried away, conveyed, or removed as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, colony, country, territory, or place whatsoever, or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves, then and in every such case the person or persons so offending shall be deemed and adjudged guilty of piracy, felony and robbery, and being convicted thereof shall suffer death without benefit of clergy, and loss of lands, goods and chattels, as pirates, felons and robbers upon the seas ought to suffer.

X. And be it further enacted, That (except in such special cases as are in and by this act permitted or otherwise provided for) if any persons shall deal or trade in, purchase, sell, barter, or transfer, or contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves, or shall, otherwise than as aforesaid, carry away or remove, or contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves; or shall import or bring, or contract for the importing or bringing, into any place whatsoever, slaves or other persons, as or in order to their being dealt with as slaves; or shall, otherwise than as aforesaid, ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves; or shall ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transshipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being imported or brought into any place whatsoever, as or in order to their being dealt with as slaves; or shall fit out, man, navigate, equip, dispatch, use, employ, let or take to freight or on hire, or contract for the fitting out, manning, navigating, equipping, dispatching, using, employing, letting or taking to freight or on hire, any ship, vessel, or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or shall knowingly and wilfully lend or advance, or become security for the loan or advance, or contract for the lending or advancing, or becoming security for the loan or advance of money, goods, or effects employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or shall knowingly and wilfully become guarantee or security, or contract for the becoming guarantee or security, for agents employed or to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful, or in any other manner to engage, or to contract to engage directly or indirectly therein, as a partner, agent, or otherwise; or shall knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for the shipping, transshipping, lading, receiving, or putting on board of any ship, vessel, or boat, money, goods, or effects to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or shall take the charge or command, or navigate, or enter and embark on board, or contract for the taking the charge or command, or for the navigating or entering and embarking on board of any ship, vessel, or boat, as captain, master, mate, surgeon, or supercargo, knowing that such ship, vessel, or boat is actually employed, or is in the same voyage or upon the same occasion, in respect of which they shall so take the charge, or command, or navigate or enter and embark, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or shall knowingly and wilfully insure, or con-

Persons dealing in slaves or exporting or importing slaves;

or shipping slaves in order to exportation or importation;

or fitting out slave ships;

or embarking capital in the slave trade;

or guaranteeing slave adventures;

or shipping goods, &c. to be employed in the slave trade;

or serving on board slave ships as captain, master, &c. surgeon, &c.;

or insuring slave adventures;

or forging instruments relating to the slave laws;

declared guilty of felony, &c.

Seamen, &c. serving on board such ships guilty of misdemeanor.

Saving the option to sue for penalties in the Vice-Admiralty Courts.

See the marginal notes, *infra*.\*

Slaves may be employed in navigation, under certain regulations.

tract for the insuring of any slaves, or any property or other subject matter engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; or shall wilfully and fraudulently forge or counterfeit any certificate, certificate of valuation, sentence, or decree of condemnation or restitution, copy of sentence, or decree of condemnation or restitution, or any receipt (such receipts being required by this act), or any part of such certificate, certificate of valuation, sentence or decree of condemnation or restitution, copy of sentence or decree of condemnation or restitution, or receipt as aforesaid; or shall knowingly and wilfully utter or publish the same, knowing it to be forged or counterfeited, with intent to defraud his Majesty, his heirs or successors, or any other person or persons whatsoever, or any body politic or corporate; then and in every such case the person or persons so offending, and their procurers, counsellors, aiders, and abettors, shall be and are hereby declared to be felons, and shall be transported beyond seas for a term not exceeding fourteen years, or shall be confined and kept to hard labour for a term not exceeding five years nor less than three years, at the discretion of the Court before whom such offender or offenders shall be tried and convicted.

XI. And be it further enacted, That (except in such special cases, or for such special purposes as are in and by this act expressly permitted) if any persons shall enter and embark on board, or contract for the entering and embarking on board of any ship, vessel, or boat, as petty officer, seaman, marine, or servant, or in any other capacity not herein-before specifically mentioned, knowing that such ship, vessel, or boat is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so enter and embark on board, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have herein-before been declared unlawful; then and in every such case the persons so offending, and their procurers, counsellors, aiders, and abettors, shall be and they are hereby declared to be guilty of a misdemeanor only, and shall be punished by imprisonment for a term not exceeding two years.

XII. Provided always, and it is hereby further enacted and declared, That nothing in this act contained, making piracies, felonies, robberies, and misdemeanors of the several offences aforesaid, shall be construed to repeal, annul, or alter the provisions and enactments in this act also contained, imposing forfeitures and penalties, or either of them, upon the same offences, or to repeal, annul, or alter the remedies given for the recovery thereof; but that the said provisions and enactments imposing forfeitures and penalties shall in all respects be deemed and taken to be in full force, it being the true intent and meaning of this act that the right and privilege heretofore exercised of suing in Vice-Admiralty Courts for the forfeitures or penalties shall remain in full force and effect as before the passing of this act; and the jurisdiction of the said Vice-Admiralty Courts in all cases of forfeitures and penalties imposed by this act is hereby established, given, ratified, and confirmed.

XIII. *Superseded by 3 & 4 W. 4. c. 73.*

XIV. *Superseded by 3 & 4 W. 4. c. 73.*

XV. *Expired.*

XVI. *Superseded by 3 & 4 W. 4. c. 73.*

XVII. *Superseded by 3 & 4 W. 4. c. 73.*

XVIII. Provided also, and be it further enacted, That nothing in this act contained shall prevent any slave or slaves from being employed in navigation, in numbers not exceeding in any one vessel or boat those usually employed in navigating such vessels or boats; nevertheless where he or they shall be designedly

\* XIII. Nothing herein shall prevent persons from purchasing slaves in any island, &c. belonging to his Majesty, provided they shall be employed in the island, &c.

XIV. Such slaves may be removed coastwise, or by land, to any other part of the same island, &c. Where there are two or more islands in the same colonial government, proprietors of slaves may remove them to any island within the government, the governor granting licence for that purpose.

XV. His Majesty in Council may authorize, until July 31. 1827, the removal of slaves from any British island in the West Indies to another British island there, under certain circumstances and upon certain conditions.

XVI. Convict slaves may be transported from a British island to a foreign settlement.

XVII. Domestic slaves may accompany their masters, under the regulations therein mentioned.



so employed in navigating from any British island, colony, plantation, or territory, the regulations prescribed for the transit of domestic slaves as aforesaid shall be duly observed.

XIX. Provided also, and be it further enacted, That nothing in this act contained shall prevent any slave or slaves from being employed in fishing, or any other his ordinary business or occupation upon the seas; nevertheless, where he or they shall be so employed in the course of a navigation designedly undertaken from any British island, colony, plantation, or territory, the regulations prescribed for the transit of domestic slaves as aforesaid shall be duly observed.

As also in fishing, or other their ordinary occupations.

XX. Provided also, and be it further enacted, That nothing in this act contained shall prevent any slave or slaves from being put on board any ship or vessel by the order of his Majesty's commander-in-chief, either by sea or land, in any island, colony, plantation, or territory belonging to or under the dominion of his Majesty, in order to be employed in his Majesty's military or naval service, and from being by such order so employed, however or wheresoever the said service may require.

Slaves may be employed in the military and naval services.

XXI. Provided also, and be it further enacted, That nothing in this act contained shall prevent the transshipping and assisting at sea any slave or slaves which shall be in any ship or vessel in distress.

Slaves in vessels in distress may be assisted.

XXII. And be it further enacted, That all slaves and all persons treated, dealt with, carried, kept, or detained as slaves, which shall be seized or taken as prize of war or liable to forfeiture under this act, shall and may, for the purposes only of seizure, prosecution, and condemnation as prize or as forfeiture, be considered, treated, taken, and adjudged as slaves and property, in the same manner as negro slaves have been heretofore considered, treated, taken, and adjudged when seized as prize of war, or as forfeited for any offence against the laws of trade and navigation respectively; but the same shall be condemned as prize of war or as forfeited to the sole use of his Majesty, his heirs and successors, for the purpose only of divesting and barring all other property, right, title, or interest whatever which before existed or might afterwards be set up or claimed in or to such slaves or persons so seized, prosecuted, or condemned; and the same nevertheless shall in no case be liable to be sold, disposed of, treated, or dealt with as slaves by or on the part of his Majesty, his heirs or successors, or by or on the part of any person or persons claiming, or to claim from, by or under his Majesty, his heirs and successors, or under or by force of any such sentence or condemnation: Provided always, that it shall be lawful for his Majesty, his heirs and successors, and such officers, civil or military, as shall by any general or special order of the King in Council be from time to time appointed to receive, protect, and provide for such persons as shall be so condemned, either to enter and enlist the same or any of them into his Majesty's land or sea service as soldiers, seamen or marines, or to bind the same or any of them, whether of full age or not, as apprentices for any term not exceeding seven years, to such person or persons, in such place or places, and upon such terms and conditions, and subject to such regulations, as to his Majesty shall seem meet, and as shall by any general or special Order of his Majesty in Council be in that behalf directed and appointed; and any indenture of apprenticeship, duly made and executed by any person or persons to be for that purpose appointed by any such Order in Council for any term not exceeding seven years, shall be of the same force and effect as if the party thereby bound as an apprentice had himself or herself when of full age upon good consideration duly executed the same; and every such person who shall be so enlisted or entered as aforesaid into his Majesty's land or sea forces as a soldier, seaman, or marine shall be considered, treated, and dealt with in all respects as if he had voluntarily so enlisted or entered himself.

Directing the manner in which captured slaves shall be disposed of.

XXIII. Provided always, and be it further enacted, That in case any person or persons illegally held or detained in slavery shall hereafter by shipwreck or otherwise be cast upon, or shall escape to or arrive at any island or colony, fort, territory, or place under the dominion or in the possession of his Majesty, it shall and may be lawful for his Majesty, his heirs and successors, or for any such officers civil or military as aforesaid, to deal with, protect and provide for any such person or persons, in such and the same manner as is herein-before directed with respect to persons condemned as prize of war, or as forfeited under this act.

In case persons detained in slavery shall escape any officer may provide for and protect them.

XXIV. And be it further enacted, That whenever any person apprenticed under the provisions of any of the acts for the abolition of the slave trade shall be ill-treated by the master to whom he is apprenticed, or by any other person by his directions, or with his knowledge, approbation, or consent, it shall and may

Where apprentices under the provisions of the acts for the abolition of

the slave trade are ill-treated by their masters, they may apply to the Judge of the Vice-Admiralty, who shall summarily decide therein.

Judge may fine the master any sum not exceeding 100*l.* and may cancel the indenture.

Captors of slaves taken as prize of war to be allowed a bounty not exceeding 20*l.* for every man taken.\*

The governor and party prosecuting to be allowed a bounty.

If seizure made at sea 10*l.* per man, &c.\*

If not made at sea 7*l.* 10*s.* per man.\*

Mode of obtaining such bounty.

Decision of doubtful claims to be determined by the Judge of Admiralty.

Limitation of appeal.

be lawful for such person so apprenticed and so ill-treated, to apply himself, or by any other person on his behalf, to the Judge of the Vice-Admiralty Court nearest to which his said master shall be residing; and the said Judge shall have authority and is hereby empowered and required to take cognizance of the said complaint, and to summon the said master, witnesses, and other persons before him, and examine into the same summarily, and decide thereupon; and if the said complaint shall, in the judgment of the said Court, be satisfactorily proved, it shall be lawful for the said Judge to fine the said master any sum not exceeding one hundred pounds of good and lawful money of Great Britain, and to enforce payment thereof by distress and imprisonment; and also, if it shall seem to him meet, to cancel the indentures of apprenticeship; and any fine so enforced shall go to and belong to our sovereign lord the King, his heirs and successors.

XXV. Provided always, and be it further enacted, That where any slaves or persons treated, dealt with, carried, kept, or detained as slaves taken as prize of war by any of his Majesty's ships of war or privateers duly commissioned shall be finally condemned as such to his Majesty's use as aforesaid, there shall be paid to the captors thereof, out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, such bounty as his Majesty, his heirs and successors, shall direct by any Order in Council, so as the same shall not exceed the sum of twenty pounds lawful money of Great Britain for every man, woman, and child that shall be so taken and condemned, and shall be delivered over to the proper officer or officers, civil or military, appointed to receive, protect, and provide for the same; which bounties shall be divided amongst the officers, seamen, marines, and soldiers on board his Majesty's ships of war or hired armed ships, in manner, form, and proportion, as by his Majesty's proclamation for granting the distribution of prizes to be issued for that purpose shall be directed and appointed, and amongst the owners, officers, and seamen of any private ship or vessel of war in such manner and proportion as by any agreement in writing which they shall have entered into for that purpose shall be directed.

XXVI. Provided also, and be it further enacted, That on the condemnation to the use of his Majesty, his heirs and successors, of any slaves or persons treated, dealt with, carried, kept, or detained as slaves, seized and prosecuted not as prize of war, but as forfeited for any offence against this act (when such seizure has been made at sea by the commander or officer of any of his Majesty's ships or vessels of war), there shall be paid to the commander or officer of such ship or vessel of war, who shall so seize, inform, and prosecute, for every man, woman, and child so condemned and delivered over, the sum of ten pounds like money, subject nevertheless to such distribution of the said bounties or rewards for the said seizures made at sea as his Majesty, his heirs and successors, shall think fit and direct by any order in council made for that purpose; and where such seizure shall not have been made at sea by the commander or officer of any of his Majesty's ships or vessels of war, there shall be paid to and to the use of the person who shall have sued, informed, and prosecuted the same to condemnation, the sum of seven pounds ten shillings lawful money aforesaid, for every man, woman, and child that shall be so condemned and delivered over, and also the like sums to and to the use of the governor or commander in chief of any colony or plantation wherein such seizure shall be made.

XXVII. Provided always, and be it further enacted, That in order to entitle the captors to receive the said bounty money, the numbers of men, women, and children so taken, condemned, and delivered over shall be proved to the Commissioners of his Majesty's Treasury, by producing a copy duly certified of the sentence and decree of condemnation, and also a certificate under the hand of the said officer or officers, military or civil, so appointed as aforesaid, and to whom the same shall have been delivered, acknowledging that he or they hath or have received the same, to be disposed of according to his Majesty's instructions and regulations as aforesaid.

XXVIII. Provided also, and be it further enacted, That in any cases in which doubts shall arise whether the party or parties claiming such bounty money is or are entitled thereto, the same shall be summarily determined by the Judge of the High Court of Admiralty, subject nevertheless to an appeal to the Lords Commissioners of Appeals in Prize Causes.

XXIX. Provided always, and be it further enacted, That no appeals shall be

\* Repealed as to the rates of bounties by 1 W. 4. c. 55. granting other bounties in lieu thereof (See Appendix, No. XXII.)

prosecuted from any decree or sentence of any Court of Admiralty or Vice-Admiralty, touching any of the matters provided for in this act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced, except where such decree or sentence shall be passed in any Vice-Admiralty Court at the Cape of Good Hope or to the eastward thereof, in which cases eighteen months shall be allowed for the prosecution of the said appeal.

XXX. Provided also, and be it further enacted, That nothing in this act contained shall be construed to repeal or alter a certain act passed in the fifty-seventh year of his late Majesty King George the Third, intituled "An Act to settle the Share of Prize Money, Droits of Admiralty and Bounty Money, payable to Greenwich Hospital, and for securing to the said Hospital all unclaimed Shares of Vessels found derelict, and of Seizures for Breach of the Revenue, Colonial Navigation, and Slave Abolition Laws;" but that the provisions of the said act shall be and they are hereby declared to be applicable to the several matters and things in this act contained, the same as if the said provisions were specially enumerated and enacted herein.

XXXI. Provided also, and be it further enacted, That it shall be lawful for his Majesty in Council, from time to time to make such orders and regulations for the future disposal and support of such persons as shall have been bound apprentices under this act, or the acts hereby repealed, after the term of their apprenticeship shall have expired, or the indenture of apprenticeship shall have been cancelled, as to his Majesty shall seem meet, and as may prevent such persons from becoming at any time chargeable upon the island, colony, or settlement in which they shall have been so bound apprentices as aforesaid.

XXXII. And be it further enacted, That when any slaves or persons treated, dealt with, carried, kept, or detained as slaves, shall be captured or seized as prize of war, or as forfeited or liable to forfeiture to his Majesty, or otherwise proceeded against in and by virtue of any law, and brought to adjudication in the High Court of Admiralty, or in any Court of Vice-Admiralty, or in any Court of his Majesty's colonies or plantations, or elsewhere within his Majesty's dominions, which is or may be authorized to hold jurisdiction in such cases, it shall be lawful for the person or persons claiming any right or property in, or the possession of such slaves, and he is hereby required to put such slaves on shore; and it shall be lawful for the collector or other chief officer of the Customs in such port or place in which such slaves shall be brought to adjudication, and he is hereby required to direct enquiry to be made whether the persons or person claiming any right or property in or the possession of such slaves, shall have furnished or shall be willing and able to furnish sufficient food and necessaries for the support and wholesome maintenance of the said slaves, during the proceedings which may have been or may be instituted respecting such slaves; and such collector or other chief officer of the Customs shall, as soon as may be, report to the governor or lieutenant governor, or other person exercising the authority of governor in such colony, or plantation, or place, the result of such enquiry; and if it shall appear to the said governor or lieutenant governor, or other person exercising the authority of governor, that sufficient food and necessaries for the wholesome maintenance of such slaves, during the proceedings so instituted or to be instituted as aforesaid, have not been furnished, and if the person or persons claiming any right or property in or to such slaves shall refuse or afterwards neglect or omit to supply proper food and necessaries for the support and wholesome maintenance of the said slaves during such proceedings, the said governor or lieutenant governor, or other person exercising the authority of governor in such colony, or plantation, or place, being satisfied of the truth of the report so made to him, shall authorize the said collector or chief officer of the Customs to take on himself the immediate care and custody of such slaves, and to provide proper food and necessaries for such slaves, during the proceedings so instituted or to be instituted in any such Court as aforesaid, until the said Court shall have made its decree, having the force and effect of a definitive sentence, condemning or restoring the said slaves; and in case the said Court shall, by such decree, absolutely restore or condemn such slaves, the said Court shall, on application made by the said collector or chief officer of the Customs so providing or having provided for the support and maintenance of such slaves as aforesaid, direct the accounts for the provisions and necessaries so supplied for the said slaves to be brought into the registry of the Court and examined, and direct the same, when confirmed, to be a charge on the said slaves, to be defrayed by the person receiving possession thereof under the decree of such Court: Provided nevertheless, that in case the Court shall not immediately restore or condemn the said slaves by decree, having

Saving the rights of Greenwich Hospital.  
57 G. 3. c. 127

Persons apprenticed under the act, on the expiration of their apprenticeship, how to be disposed of.

Mode of providing for slaves captured or seized during the period of adjudication.

If party claiming slaves shall neglect to provide for them

pending proceedings, they shall be dealt with as prescribed by this act for slaves condemned to his Majesty's use; but no bounty shall be payable for them, unless finally condemned.

Proceedings with respect to slaves in case of appeal from a definitive sentence.

Where slaves shall be restored in the Court of Appeal restitution in value shall be awarded, deducting the expenses of maintenance.

In case of decree of restitution, costs or damages may be awarded where capture appears unjustifiable.

Ships condemned for illicit traffic in slaves may be registered as British ships.

the force and effect of a definitive sentence, but shall direct further proof to be made in the cause, whereby the restitution or condemnation shall be deferred, and the person claiming any right or property in or the possession of the said slaves shall not have supplied, or at any time pending proceedings in that Court shall refuse or neglect to supply proper food and necessaries for the said slaves, it shall be lawful for the Court to direct a valuation to be made of such slaves, and to decree such slaves, after such valuation had and approved by the Court, to be delivered over to such officer or person as may be appointed by his Majesty to receive slaves condemned to his Majesty's use, according to the provisions of this act, and the same shall be dealt with and treated in all respects according to the said provisions, save and except that the bounty shall not be due or payable for such slaves, but in the event of final condemnation, according to the provisions of this act.

XXXIII. And be it further enacted, That in all cases in which there shall have been a decree having the force and effect of a definitive sentence, restoring or condemning the said slaves, and the same shall be suspended by appeal, it shall be lawful for the Court, notwithstanding such appeal, and it is hereby required to proceed forthwith to direct the slaves so detained to be valued as above directed; and after such valuation had and approved by the Court, to be delivered over to such officer or person as may be appointed to receive slaves condemned to his Majesty's use, according to the aforesaid provisions, as if the same had been finally condemned to his Majesty; and such slaves shall be treated and dealt with in all respects in the same manner as if they had been finally condemned to his Majesty, save and except that the bounties shall not be due or payable thereon, but in the event of final condemnation to his Majesty, according to the provisions of this act.

XXXIV. And be it further enacted, That in all cases in which such slaves shall have been delivered over as before directed, and shall be finally restored in the Court of Appeal, restitution in value shall be made for the use of the claimant or proprietor thereof, according to the valuation made as above directed, together with interest thereon, such sums being deducted therefrom as may have been expended for the support and maintenance of the said slaves, by the collector or chief officer of the Customs as above directed; and the value so adjusted shall be paid out of the consolidated fund in the same manner as bounties are directed to be paid for slaves condemned to his Majesty under this act, on the production of an official copy of the final sentence of restitution, with the valuation of the said slaves endorsed thereon by the registrar of the said Court, or his deputy, subject nevertheless, when the restitution shall be decreed by the Court of Appeal, to the review and correction of the said valuation.

XXXV. Provided always, and be it enacted, That nothing herein contained shall prevent the said Courts or any of them having jurisdiction in the principal cause, from adjudging and decreeing the captors, seizers, or prosecutors, in any such cause as aforesaid, to pay out of their own proper monies such sums in the nature of costs or damages as the said Court shall decree, when it shall appear to such Court that the capture, seizure, or prosecution, or the appeal thereon on the behalf of the captor, seizer, or prosecutor, shall not be justified by the circumstances of the case.

XXXVI. And be it further enacted, That all ships or vessels, whether British or foreign, which shall be condemned in any Court of Admiralty or Vice-Admiralty in any part of his Majesty's dominions, for any offence in relation to the slave trade, or under any of the Mixed Commission Courts herein-after mentioned, or which may in future be established in pursuance of any treaty or convention between this country and any foreign power, shall, from and after such judgment or condemnation respectively, be entitled to a certificate of registry as a British ship, and thereupon have and enjoy all the privileges and advantages of British-built ships and vessels, being first "duly registered according to the provisions of an act made in the twenty-sixth year of the reign of his late Majesty, and shall be deemed and taken as such, and shall be entitled to have and enjoy all and every the same rights, liberties, privileges, and advantages in all respects whatsoever with British-built ships and vessels, and shall be subject and liable to all and every the rules and regulations that British-built ships or vessels are subject and liable to; any law, custom, or usage to the contrary thereof in anywise notwithstanding.

XXXVII. And whereas in and by an act, passed in the fifty-ninth year of his late Majesty King George the Third, intituled "An Act for establishing a Registry of Colonial Slaves in Great Britain, and for making further Provisions with respect to the Removal of Slaves from British Colonies," it is enacted, that it

59 G. 3. c. 120.  
authorizing the  
King to appoint  
a registrar for

shall be lawful for his Majesty to nominate and appoint, by warrant under the hand and seal of one of his Majesty's principal secretaries of state, some fit and proper person as the registrar of colonial slaves, to receive the copies of all registries or returns of slaves, and of any abstracts or indexes referring thereto, which may have been, or which may at any time hereafter be transmitted from any of his Majesty's foreign possessions, either in pursuance of any order of his Majesty in council, or of any law or ordinance duly passed in any of the British colonies respectively, which said registrar, and his successors respectively, shall continue to hold the said office during his Majesty's pleasure; and also, that the Commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, shall assign to the registrar so appointed such a salary, not exceeding in the whole the sum of eight hundred pounds per annum, as shall appear to them adequate and proper, and shall fix the number of such clerks, officers, or other persons, to assist the said registrar, as may from time to time be necessary, and shall allow to them also such salaries as may be proper, and also reasonable sums for incidental charges; all which salaries and charges shall be defrayed and paid, in the same manner as the salaries and incidental charges of the offices of his Majesty's principal secretaries of state are now defrayed and paid; and also, that the said Commissioners of the Treasury, or any three or more of them, shall provide a proper and distinct office for the said registrar, and shall appoint the several fees to be taken by the registrar or his assistants in the said office, and shall cause a schedule of the same to be delivered to the said registrar at the time of his appointment, which said schedule, or a copy thereof, shall be always kept and hung, for public information, in the office of the registrar; provided always, that the fees so received by the registrar or his assistants, shall be carried to the public account, and the residue thereof, if any, after paying the salaries of the registrar and other persons employed in his office, shall be applied, under the direction of the said Commissioners of the Treasury, in aid of the expences of his Majesty's civil list; and also, that the person who may be at any time appointed registrar of colonial slaves shall, before he enters on the execution of his said office, be sworn, before the chief justice, or one of the justices of his Majesty's Courts of King's Bench or Common Pleas, or the chief baron, or one of the barons of his Majesty's Court of Exchequer, in the words following;

"I *A. B.* do solemnly promise and swear, that I will in all respects faithfully and uprightly perform the duties of registrar of colonial slaves, to the best of my judgment and ability.

"So help me God."

And also, that any registrar of slaves who may be appointed by virtue of this act shall, during his continuance in such office, be incapable of being elected or of sitting as a member of the House of Commons; and also, that as soon as the office of registrar of colonial slaves shall be opened, copies and duplicates of the several registries and returns of slaves in the several colonies, and all papers connected therewith, which may have been received by any of his Majesty's secretaries of state, shall be delivered over to the said registrar, and shall be by him kept in the said office; and the said registrar shall from time to time carry on, continue, correct, and enlarge the copies of the several registries of slaves respectively, pursuant to the further returns of slaves which may from time to time be received from the several colonies, and shall form such indexes and abstracts, and such convenient arrangements in other respects as may best promote regularity in keeping the said books and facilitate search therein; and also, that every such registrar or his clerk or assistants, so to be appointed as aforesaid, shall give due attendance at the said office every day in the week (except Sundays and such holidays as are kept at the Bank of England), from the hour of ten of the clock in the morning to the hour of four of the clock in the afternoon, for the dispatch of all business belonging to the said office; and that every such registrar, or his clerks or assistants, shall, as often as required, make searches concerning any slave or slaves that shall be registered or supposed to be registered in any of the said books; and shall also, if required, give certificates under the hand of the said registrar as to the registration or non-registration of any such slave or slaves, with extracts, when the same is or are found to be registered, of the name and description or names and descriptions thereof, and of the plantation or plantations, owner or owners to whom the same is or are described to belong, and of any other particulars relating thereto which may be stated in the said registry; and that such registrar shall be entitled to receive for every such search, certificate, or extract such sums as shall be duly appointed in the schedule of fees, to be fixed by the said Commissioners of the Treasury as

colonial slaves, confirmed;

his salary, clerks, and officers.

Office fees; and application thereof.

Oath of office.

Registrar ineligible as a member of the House of Commons.

Returns, &c. shall be delivered over to the registrar, and be continued and corrected by him.

Registrar's attendance and duties.

Fees thereon.

Purchase of slaves or advance of money on security of slaves in the colonies allowable only in case of registration.\*

What slaves shall be considered registered for the purpose of purchase.\*

By what forms only slaves in the colonies may be conveyed or charged.\*

Manner in which the issue of slaves named in deeds shall pass or be charged thereby.

A governor de facto shall be a governor within this act.

is herein-before provided for ; and also, that it shall not be lawful for any of his Majesty's subjects in this United Kingdom to purchase or to lend or advance any money, goods, or effects upon the security of any slave or slaves in any of his Majesty's colonies or foreign possessions, unless such slave or slaves shall appear by the return received therein to have been first duly registered in the said office of the registrar of colonial slaves ; and that every sale, mortgage, and conveyance, or assurance of, and every charge or other security upon any slave or slaves not so appearing to be registered, which shall be made or executed within this United Kingdom, to or in trust for any of his Majesty's subjects, shall be absolutely null and void in respect of any such unregistered slave or slaves ; and that for this purpose no slave or slaves shall be deemed and taken to be duly registered, unless it shall appear that a return of such slave or slaves duly made by the owner or owners or other persons in his or their behalf, in the manner and form required by law in the colony in which such slave or slaves may reside, or a copy or abstract of such return, shall have been received in the office of the said registrar from the colony in which such slave or slaves shall reside, within the four years next preceding the date of such sale, mortgage, conveyance, or assurance, charge, or security as aforesaid ; and also, that no deed or instrument made or executed within this United Kingdom, whereby any slave or slaves in any of the said colonies shall be intended to be mortgaged, sold, charged, or in any manner transferred or conveyed, or any estate or interest therein created or raised, shall be good or valid in law, to pass or convey, charge or affect any such slave or slaves, unless the registered name and description, or names and descriptions, of such slave or slaves, shall be duly set forth in such deed or instrument, or in some schedule thereupon indorsed or thereto annexed, according to the then latest registration, or corrected registration, of such slave or slaves, in the said office of the registrar of slaves ; provided always, that no deed or instrument shall be avoided or impeached by reason of a clerical error in setting forth the names and descriptions of any slave or slaves therein, or in any schedule thereto contained, nor shall the same be avoided or impeached by reason of any disagreement between the names and descriptions and the entries thereof, in the books of the registry, or duplicate registry, which shall have arisen from any error or default of the registrar, his assistant or clerks, in extracting and certifying the said names and descriptions, without the fraudulent contrivance or wilful default of the parties to such deed or instrument ; provided also, that nothing herein contained shall extend or be construed to hinder or prevent the transfer or assignment of any security, mortgage, or charge, of or upon slaves, granted, made, created, or executed antecedently to the passing of this act, nor to avoid any deed or instrument whereby such security, mortgage or charge shall be hereafter transferred, nor to avoid, hinder, or impeach any will, codicil, or other testamentary paper, or any probate or letters of administration, or any bill of sale, assignment, conveyance, or instrument, made by or under the authority of any commission of bankrupt, or any public officer appointed to assign or convey any insolvent estate and effects, or by or under the authority of any Court of Justice, or any officer thereof, or in the execution of any legal process, by reason that the registered names and descriptions of any slaves are not set forth in such deed, will, codicil, testamentary paper, probate or letters of administration, bill of sale, assignment, conveyance, or instrument ; and also, that the issue of any slave or slaves, named or described in any deed or instrument executed in the United Kingdom, or any schedule thereto, born after the return required by law, in the colony in which such slave or slaves may be resident, who shall afterwards be duly registered in the next return required by law in the said colony, shall be deemed and considered to pass and be conveyed and affected as registered slaves by such deed or instrument, as effectually to all intents and purposes as if such issue were therein named and described, and any thing in this act contained to the contrary notwithstanding ; now be it declared and enacted, That the said several enactments shall be and remain in full force and effect.

XXXVIII. And be it further enacted, That every act which the governor of any island, colony, plantation, or territory, belonging to or under the dominion of his Majesty, is by this act directed or authorized to do or perform, may be lawfully done or performed by the person or persons executing, pro tempore, the office or function of governor of any such island, colony, plantation, or territory, by authority from his Majesty, whether under the style and title of Governor,

\* *Semble*, superseded by 3 & 4 W. 4. c. 73.

Lieutenant Governor, President of the Council, or under any other style or title whatsoever.

XXXIX. And be it further enacted, That every mortgage, bond, bill, note, or other security, made in or to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have by this act been declared unlawful, shall, except in the case of a bonâ fide purchaser or holder of any such of the said securities as are in their nature negotiable, who may have purchased or obtained the same, without notice that the same were made or given for any such unlawful purposes, be void.

All securities given in contravention of this act shall be void.

XL. Provided always, and be it further enacted, That if any person or persons offending as a petty officer, seaman, marine, or servant, against any of the provisions of this act, shall, within two years after the offence committed, give information on oath before any competent magistrate against any owner or part owner, or any captain, master, mate, surgeon, or supercargo of any ship or vessel, who shall have committed any offence against this act, and shall give evidence on oath against such owner or part owner, captain, master, mate, surgeon, or supercargo before any magistrate or Court before whom such offender may be tried; or if such person or persons so offending shall give information to any of his Majesty's ambassadors, ministers plenipotentiary, envoys, charges d'affairs, consuls, residents, or other agents, so that any person or persons owning such ship or vessel, or navigating or taking charge of the same, as captain, master, mate, surgeon, or supercargo, may be apprehended, such person or persons so giving information and evidence shall not be liable to any of the pains or penalties under this act, incurred in respect of his offence, and his Majesty's ambassadors, ministers plenipotentiary, envoys, charges d'affairs, consuls, residents, or other agents, are hereby required to receive any such information as aforesaid, and to transmit the particulars thereof, without delay, to one of his Majesty's principal secretaries of state, and to transmit copies of the same to the commanders of his Majesty's ships or vessels then being in the said port or place.

In what cases offenders shall be exempted.

XLI. And be it further enacted, That if any oath taken under this act shall be wilfully false, or if such false oath shall be unlawfully or wilfully procured or suborned, the offender shall incur and suffer the like pains and penalties as are by law inflicted upon persons committing wilful and corrupt perjury, or subornation of perjury respectively.

Punishment for perjury.

XLII. And be it further enacted, That where any slave or slaves that may be lawfully removed shall be sent, removed, carried, or conveyed, without observing the regulations, or any or either of them, required by this act, such slave or slaves shall be forfeited to his Majesty, his heirs and successors; and where any slave or slaves shall be found on board, who shall be untruly or fraudulently described in or upon the clearance or permit required by this act, with intent to violate or elude any of the prohibitions or regulations in this act contained, the owner, master, or other person by whom or by whose procurement such slave or slaves shall be so untruly or fraudulently described, with such intent as aforesaid, shall respectively forfeit and pay the sum of one hundred pounds lawful money of Great Britain for every such slave or slaves; and also where the non-observance shall consist in exporting, sending, removing, carrying, or conveying any slave or slaves (not being domestics or mariners, as in this act aforesaid,) without such certified copy from the registrar of the colony, as by this act is mentioned, the ship or vessel in which the same shall be so exported, sent, removed, carried, or conveyed, shall be forfeited to his Majesty, his heirs and successors; and where the non-observance shall consist in embarking or carrying any slave or slaves without such certificate, the master or other person having the charge of the ship or vessel in which the same shall be so embarked and carried, without such certificate as aforesaid, shall forfeit and pay the sum of one hundred pounds lawful money aforesaid for every such slave or slaves.

Slaves removed without observing regulations, forfeited.

Penalty 100*l.* for every such slave and ship.

XLIII. And be it further enacted, That all ships, vessels, slaves, or persons treated, dealt with, carried, kept, or detained as slaves, and all goods and effects that may become forfeited under this act, shall and may be seized by any officer of his Majesty's Customs, or by the commanders or officers of any of his Majesty's ships or vessels of war, or any officer bearing his Majesty's commission in his Majesty's navy or army; and moreover it shall and may be lawful for all governors or persons having the chief command, civil or military, of any of the colonies, settlements, forts, or factories belonging to his Majesty, and for all persons deputed and authorized by any such governor or commander in chief, to seize and prosecute all ships and vessels, slaves, or persons treated, dealt with, carried, kept, or detained as slaves, and all goods and effects whatsoever that shall or may become forfeited for any offence under this act,

Penalty upon masters of ships carrying slaves without certificate, 100*l.* for every such slave.

Seizure of forfeitures by whom made.

Appropriation  
of ship and  
goods forfeited.

XLIV. And be it further enacted, That the proceeds of all ships and goods seized, prosecuted, and condemned for any offence against this act, except in such seizures as shall be made at sea by the commanders or officers of his Majesty's ships or vessels of war, shall be divided, paid, and applied as follows; that is to say, after deducting the charges of prosecution from the gross amount thereof, one third of the net proceeds shall be paid into the hands of such person as his Majesty, his heirs and successors, may please to appoint, for the use of his Majesty, his heirs and successors; one third part thereof to the governor or commander in chief of the island, colony, plantation, settlement, or territory where the said seizure shall have been made or prosecuted; and the other third part thereof to the person or persons who shall lawfully seize, inform, and prosecute the same to condemnation; and in cases of seizures made at sea by the commanders or officers of his Majesty's ships or vessels of war, one moiety of the said net proceeds, after deducting the charges of prosecution as aforesaid, shall be paid into the hands of such person as his Majesty, his heirs and successors, may please to appoint, for the use of his Majesty, his heirs and successors, and the other moiety to the commanders or officers of his Majesty's ships or vessels of war who shall have made the seizure, and prosecuted the same to condemnation; subject nevertheless to such distribution in the seizures made by the commanders or officers of his Majesty's ships or vessels of war, whether at sea or otherwise, as his Majesty, his heirs and successors, shall think fit to order and direct by any Order or Orders in Council, or by any proclamation or proclamations to be made for that purpose.

Privileges of  
seizors.

4 G. S. c. 15.  
*repealed, but  
see 8 & 9 Vict.  
c. 93., pages  
439 and 440,  
ante.*

XLV. And be it further enacted, That all persons authorized to make seizures under this act shall, in making and prosecuting any such seizures, have the benefit of all the provisions made by an act of the fourth year of his late Majesty King George the Third, intituled "An Act for granting certain Duties in the British Colonies and Plantations in America; for continuing, amending, and making perpetual an Act, passed in the Sixth Year of the Reign of His late Majesty King George the Second, intituled 'An Act for the better securing and encouraging the Trade of His Majesty's Sugar Colonies in America;' for applying the Produce of such Duties, and of the Duties to arise by virtue of the said Act, towards defraying the Expences of defending, protecting, and securing the said Colonies and Plantations; for explaining an Act made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled 'An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trade;' and for altering and disallowing several Drawbacks on Exports from this Kingdom, and more effectually preventing the clandestine Conveyance of Goods to and from the said Colonies and Plantations, and improving and securing the Trade between the same and Great Britain;" or any other act made for the protection of officers seizing and prosecuting for any offence against the said act, relating to the trade and revenues of the British colonies or plantations in America.

General issue  
and treble  
costs.

XLVI. And be it further enacted, That if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for any thing done in pursuance of this act, the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.

Limitation of  
suit for penal-  
ties and for-  
feitures.

XLVII. And be it further enacted, That all actions, suits, bills, indictments, or informations, for the recovery of any of the penalties or forfeitures under this act, may be commenced, had, brought, sued, exhibited, or prosecuted, at any time within five years after the offence committed, by reason whereof such penalty or forfeiture shall be incurred: Provided always, that where any slave or slaves have been, or shall at any time have been, illegally imported, nothing herein contained shall extend to prevent proceeding being commenced to obtain the condemnation or forfeiture thereof, but that the said slave or slaves so illegally imported shall and may be condemned and forfeited at any time after such illegal importation.

Mode of trial  
for offences  
against this  
act.

XLVIII. And be it further enacted, That all offences against this act which shall be committed in any country, territory, or place, other than this United Kingdom, or on the high seas, or in any port, sea, creek, or place where the



admiral has jurisdiction, and which shall be prosecuted as piracies, felonies, robberies, or misdemeanors, shall and may be enquired of, either according to the ordinary course of law, and the provisions of an act passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled "An Act for Pirates;" or according to the provisions of an act passed in the thirty-third year of the reign of King Henry the Eighth, intituled "An Act to proceed by Commission of Oyer and Terminer against such Persons as shall confess Treason and Felony, without remanding the same to be tried in the Shire where the Offence was committed," as far as the same act is now repealed; or according to the provisions of an act passed in the eleventh and twelfth years of the reign of his late Majesty William the Third, intituled "An Act passed for the more effectual Suppression of Piracy," in as far as the same act is now unrepealed; or according to the provisions of an act passed in the forty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act passed for the more speedy Trial of Offences committed in distant Parts, upon the Seas;" and all persons convicted of any of the said offences, to be enquired of, tried, and determined under and by virtue of any commission to be made or issued according to the directions of the said act of the forty-sixth year of his late Majesty's reign aforesaid, shall be subject and liable to and shall suffer all such and the same pains, penalties, and forfeitures as by this act, or any law or laws now in force, persons convicted of the same respectively would be subject and liable to, in case the same were respectively enquired of, tried, and determined and adjudged within this realm, by virtue of any commission made according to the directions of the statute of the twenty-eighth year of the reign of King Henry the Eighth.

28 H. 8. c. 15.

33 H. 8. c. 23.

11 & 12 W. 3.  
c. 7.

46 G. 3. c. 54.

XLIX. And be it further enacted, That all offences against this act, which shall be committed in any place where the admiral has not jurisdiction, and not being within the local jurisdiction of any ordinary Court of a British colony, settlement, plantation, or territory, competent to try such offence, may be enquired of, tried, and determined under and by virtue of any commission to be issued according to the directions of the said act of the forty-sixth year of the reign of his late Majesty King George the Third.

Offences committed out of the admiral's jurisdiction.

L. And be it further enacted, That all offences committed against this act may be enquired of, tried, determined, and dealt with, as if the same had been respectively committed within the body of the county of Middlesex.

Process and trial.

LI. And be it further enacted, That, unless in cases specially provided for by this act, all forfeitures and penalties shall and may be prosecuted, sued for, recovered, and applied as follows; that is to say, the several pecuniary penalties and forfeitures imposed and inflicted by this act shall and may be sued for, prosecuted, and recovered in any Court of Record in Great Britain, or in any Court of Record or Vice-Admiralty in any part of his Majesty's dominions wherein the offence was committed, or where the offender may be found after the commission of such offence; and all seizures of ships, vessels or boats, slaves, or persons treated, dealt with, carried, kept, or detained as slaves, goods, or effects subject to forfeiture under this act shall and may be sued for, prosecuted, and recovered in any Court of Record in Great Britain, or in any Court of Record or Vice-Admiralty in any part of his Majesty's dominions in or nearest to which such seizures may be made, or to which such ships or vessels, slaves, or persons treated as slaves as aforesaid, goods or effects (if seized at sea or without the limits of any British jurisdiction), may most conveniently be carried for trial; and all the said penalties and forfeitures, whether pecuniary or specific (unless where it is expressly otherwise provided for by this act), shall go and belong to such persons, in such shares and proportions, and shall and may be sued for and prosecuted, tried, recovered, distributed, and applied, in such and the like manner, and by the same ways and means, and subject to the same rules and directions, as any penalties or forfeitures incurred in Great Britain and in the British colonies and plantations in America respectively, by force of any act relating to the trade and revenues of the said British colonies or plantations in America, now go and belong to, and may now be sued for, prosecuted, tried, recovered, distributed, and applied respectively in Great Britain, or in the said colonies or plantations respectively, under and by virtue of a certain act made in the fourth year of his late Majesty King George the Third, intituled "An Act for granting certain Duties in the British Colonies and Plantations in America; for continuing, amending, and making perpetual an Act passed in the Sixth Year of the Reign of His late Majesty King George the Second, intituled 'An Act for the better securing and encouraging the Trade of His Majesty's Sugar Colonies in America;' for applying the Produce of such Duties to arise by virtue of the said Act towards defraying the Expences of defending, protecting, and securing the

Recovery and application of forfeitures and penalties.

4 G. 3. c. 15.  
repealed, but see  
8 & 9 Vict.  
c. 93., page 425,  
anté.

said Colonies and Plantations; for explaining an Act made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled 'An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trade;' and for altering and disallowing several Drawbacks on Exports from this Kingdom, and more effectually preventing the clandestine Conveyance of Goods to and from the said Colonies and Plantations, and improving and securing the Trade between the same and Great Britain."

Recital of certain treaties, &c. for preventing traffic in slaves.

LII. And whereas certain treaties and conventions, and a declaration, together with certain explanatory and additional articles, still subsisting full in force were made between his late Majesty King George the Third, and his Catholic Majesty the King of Spain, his most faithful Majesty the King of Portugal, and his Majesty the King of the Netherlands respectively, for preventing traffic in slaves, of the tenor and effect following; videlicet,

*The treaty with Portugal, and the convention and additional articles thereto, dated respectively the 22d January, 1815, 28th July, 1817, and 15th March, 1823, are here set forth. They are, however, superseded by the treaty of July, 1842, carried into execution by 6 & 7 Vict. c. 53.*

*The treaty with Spain, and the explanatory and additional articles thereto, dated respectively 23rd September, 1817, and 10th December, 1822, are also here set forth. They are, however, superseded by the treaty of June, 1835, carried into execution by 6 W. 4. c. 6.*

*The treaty with the Netherlands and the explanatory additional and further additional articles thereto, dated respectively 4th May, 1818, 31st December, 1822, and 25th January, 1823, are also here set forth.*

The King may appoint judges and arbitrators, and grant them salaries.

58 G. 3. c. 36.  
superseded by  
6 W. 4. c. 6.

58 G. 3. c. 85.  
extended by  
6 & 7 Vict.  
c. 53.

59 G. 3. c. 16.  
extended by  
1 & 2 Vict.  
c. 41.

59 G. 3. c. 17.

And whereas in and by an act passed in the fifty-eighth year of his late Majesty George the Third, intituled "An Act to carry into execution a Treaty made between his Majesty and the King of Spain, for preventing Traffic in Slaves;" and by a certain other act, passed in the said year, intituled "An Act to carry into execution a Convention made between his Majesty and the King of Portugal, for the preventing Traffic in Slaves;" and also by a certain other act, passed in the fifty-ninth year of his late Majesty King George the Third, intituled "An Act to carry into Effect the Treaty with the Netherlands, relating to the Slave Trade;" and also by an act passed in the said fifty-ninth year of his said late Majesty King George the Third, intituled "An Act to amend an Act of the last Session of Parliament, for carrying into execution a Convention made between his Majesty and the King of Portugal, for the preventing the Traffic in Slaves;" it is enacted, that it shall be lawful for his Majesty, by any warrant under his royal sign manual, countersigned by one of his Majesty's principal secretaries of state, to appoint such commissary judges, and commissioners of arbitration, judges, and arbitrators, as are in and by the said treaties and conventions, and the regulations thereto annexed, mentioned to be appointed by his Majesty, and from time to time to supply any vacancies which may arise in such offices, by appointing other persons thereto, and to grant salaries to such commissary judges and commissioners of arbitration, judges, and arbitrators as aforesaid, not exceeding such annual sums as the Commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland shall from time to time direct; and such commissary judges, and commissioners of arbitration, judges, and arbitrators are hereby authorized and empowered to examine and decide all such cases of detention, captures, and seizures of vessels, and their cargoes as aforesaid, detained, seized, taken, or captured under the said treaties, conventions, instructions, and regulations, or included therein, as are by the said treaties, conventions, instructions, and regulations, and by these acts, made subject to their jurisdiction; and to proceed therein, and give such judgments, and make such orders therein, and to do all other acts, matters, and things appertaining thereto, agreeably to the provisions of the said treaties, conventions, and the instructions and regulations annexed thereto as aforesaid, as fully and effectually to all intents and purposes, as if special powers and authorities for that purpose were specifically and particularly inserted and given in relation thereto in these acts: Now be it declared and enacted, that the said provisions as herein recited, shall continue, remain, and be in full force and effect.

Their jurisdiction.

The King may appoint a secretary to the Commission Courts, and grant him a salary.

LIII. And whereas in and by the said acts of the fifty-eighth and fifty-ninth of George the Third, it is enacted, that it shall be lawful for his Majesty, by any warrant under his royal sign manual, countersigned by one of his Majesty's principal secretaries of state for the time being, to nominate and appoint a secretary or registrar to the respective commissions and courts which shall be established in his Majesty's dominions, and from time to time supply, by other appointments, any vacancy which may thereafter occur in such office, and to grant a salary to

such secretary or registrar, not exceeding such annual sum as the said Commissioners of his Majesty's Treasury shall from time to time direct; and such secretary or registrar is hereby respectively authorized and empowered to do, perform, and execute all the duties of such office, as set forth and described in the said treaties, conventions, instructions, and regulations respectively, and to do, perform, and execute all such acts, matters, and things, as may be necessary for the due discharge of the duties of his office, according to the provisions of the said treaties, conventions, instructions, and regulations as aforesaid: Now be it declared and enacted, that the said provision, as herein recited, shall continue, remain, and be in full force and effect.

His authority and duty.

LIV. And be it further enacted, That it shall be lawful for the governor or lieutenant governor, or principal magistrate of the colony or settlement in which such commission or court shall sit, within the possessions of his Britannic Majesty, to fill up every vacancy which shall arise in such commission or court, either of commissary judge, commissioner of arbitration, or any officer thereof appointed by his Majesty as aforesaid, according to the provisions contained in the aforesaid regulations, annexed to the said treaties and conventions as aforesaid, ad interim, until such vacancy or vacancies shall be thereafter filled by some person or persons appointed by his Majesty for that purpose.

Governors of colonies to fill up vacancies in commissions pro tempore.

LV. And be it further enacted, That every commissary judge and commissioner of arbitration appointed by his Majesty, or ad interim as aforesaid, shall, before he shall enter upon the execution of any of the duties of such his office, take an oath in the presence of the principal magistrate then residing and acting in the colony, settlement, or place in which the commission or court shall be appointed to reside; which oath every such magistrate in any colony, settlement, or place belonging to his Majesty, in which such commission or court shall be appointed, is hereby authorized to administer, in the form following; (that is to say),

Oath to be taken by commissary judges and arbitrators.

" I A. B. do solemnly swear, that I will, according to the best of my skill and knowledge, act in the execution of my office as

faithfully, impartially, fairly, and without preference or favour, either for claimants or captors, or any other persons; and that I will to the best of my judgment and power act in pursuance of and according to the stipulations, regulations, and instructions contained in the treaty or convention between his Majesty and his Catholic Majesty, signed at Madrid on the twenty-third day of September, one thousand eight hundred and seventeen, [or in the treaty between his Majesty and his Most Faithful Majesty, of the twenty-second day of January one thousand eight hundred and fifteen, and the additional convention thereto, signed at London on the twenty-eighth day of July one thousand eight hundred and seventeen; or between his Majesty and his Majesty the King of the Netherlands, signed at the Hague on the fourth day of May one thousand eight hundred and eighteen; *[as the case may require]*.

" So help me God."

LVI. And be it further enacted, That every secretary or registrar appointed by his Majesty, or ad interim as aforesaid, under the provisions of the said treaties, conventions, instructions, and regulations, and of this act, shall, before he enters on the duties of his said office, take an oath before the British commissary judge as aforesaid, who is hereby empowered to administer the same, in the form following; that is to say,

Oath to be taken by secretary or registrar.

" I A. B. do solemnly swear, that I will, according to the best of my skill and knowledge, act in the execution of my office, and that I will conduct myself with due respect to the authority of the commissary judges and commissioners of arbitration of the commission to which I am attached, and will act with fidelity in all the affairs which may belong to my charge, and without preference or favour either for claimants or captors or any other persons.

" So help me God."

LVII. And be it further enacted, That it shall be lawful for the said commissary judges, or for any such secretary or registrar, and they are hereby respectively empowered to administer oaths to and take the depositions of all parties, witnesses, and other persons, who may come or be brought before them to be examined, or for the purpose of deposing in the course of any proceeding before the said commissary judges and commissioners of arbitration, in the cases in which such commissioners of arbitration shall act with the said commissary judges, under the said treaties, conventions, instructions, or regulations, or this act; and it shall also be lawful for the said commissary judges and commissioners

Oaths and depositions in judicial proceedings to be administered by commissary judges, &c.

Who may summon witnesses and send for papers.

of arbitration, in the cases aforesaid, to summon before them all persons whom they may deem it necessary or proper to examine, in relation to any suit, proceeding, or matter or thing under their cognizance, and to send for and issue precepts for the producing of all such papers as may relate to the matters in question before them, and to enforce all such summonses, orders and precepts, by such and the like means, powers and authorities, as any Court of Vice-Admiralty may do.

Persons giving false evidence shall be deemed guilty of perjury.

LVIII. And be it further enacted, That every person who shall wilfully and corruptly give false evidence in any examination or deposition or affidavit had or taken upon or in any proceeding before the said commissary judges or commissioners aforesaid, or in any examination or deposition or affidavit had or taken before the said secretary or registrar, under the said treaties, conventions, instructions, or regulations, or this act, shall be deemed guilty of perjury, and being thereof convicted, shall be subject and liable to all the punishments, pains, and penalties to which persons convicted of wilful and corrupt perjury are liable; and every such person may be tried for any such perjury, either in the place where the offence was committed, or in any colony or settlement of his Majesty near thereto, in which there is a Court of competent jurisdiction to try any such offence, or in his Majesty's Court of King's Bench in England; and that in case of any prosecution for such offence in his Majesty's said Court of King's Bench, the venue may be laid in the county of Middlesex.

Trial of perjury.

Venue therein.

See the marginal note, *infra*. \*

Mixed Courts under the Netherlands treaty shall be the only tribunal.

LIX. *Superseded by 6 W. 4. c. 6. and 6 & 7 Vict. c. 53.*

LX. And be it further enacted, That it shall not be lawful for any person to commence, prosecute, or proceed in any claim, action, or suit whatever, in the High Court of Admiralty, or in any other Court, or before any judges or persons whomsoever, other than the several mixed courts of justice appointed under and by virtue of the treaty with the Netherlands aforesaid, and this act, for the condemnation or restitution of any ship or cargo or slaves, or for any compensation or indemnification for any loss or damage, or for any injury sustained by such ship, cargo, or slaves, or by any persons on board any such ship, in consequence of any capture, seizure, or detention, under the authority or in pursuance of the provisions of the said treaty with the Netherlands, or of the instructions and regulations thereto annexed, or of this act; and that the pendency of any claim, suit, or proceeding instituted, or which may be instituted before any of the said mixed courts so to be appointed under the authority of the said treaty with the Netherlands, and this act, for the condemnation or restitution of any ship or cargo, or slaves, taken, seized, or detained by virtue of the said treaty with the Netherlands, or of the instructions and regulations thereto annexed, or for any compensation or indemnification for any loss or damage in consequence of the taking, seizing, or detaining any such ship, or the final adjudication, condemnation, judgment, or determination of any such mixed court, as the case shall require, may be pleaded in bar or given in evidence under the general issue; or in case no such claim, suit, or proceeding shall have been instituted before any such mixed court, then the said treaty, instructions, and regulations, and this act, may in like manner be pleaded in bar, or given in evidence under the general issue; and every such plea in bar or evidence so given under the general issue shall be deemed and adjudged to be a good and complete bar to any such claim, action, suit, or proceeding in the said High Court of Admiralty, or in any court or place other than such mixed courts.

Jurisdiction of prize appeal and Admiralty Courts.

LXI. Provided always, and be it further enacted, That it shall be lawful for the lords commissioners of appeal in prize causes, and for the High Court of Admiralty, in all cases and questions arising out of the said captures that may be depending before them, or that may be brought before them on appeal from any Vice-Admiralty Court, according to their respective jurisdictions (except in such cases as are in and by this act expressly excepted), to proceed therein, and to hear and determine all questions respecting any right or interest in or to the same, to which his Majesty, or the captors or seizers of such ships, vessels, or cargoes may claim to be entitled by reason of the capture or seizure thereof, and the laws relating thereto, and to enforce their judgments and orders therein by the usual process of the said courts.

See the marginal note, *infra*. †

LXII. *Superseded by 6 W. 4. c. 6. and 6 & 7 Vict. c. 53.*

\* LIX. Pendency of suits arising out of the Spanish and Portuguese treaties, before the commissions, shall be a bar to any other suit.

† LXII. Proceeds of Spanish and Portuguese seizures in case of captors not establishing their rights, to be paid to the use of his Majesty.

LXIII. And whereas several vessels belonging to the subjects of Spain, Portugal, and the Netherlands respectively have been captured between the seventeenth day of February one thousand eight hundred and fifteen and the period at which the commissioners appointed in virtue of the before-mentioned treaties or conventions have assembled : and whereas the vessels belonging to the subjects of Portugal so captured as aforesaid are, by the additional convention with that state, bearing date the twenty-eighth day of July one thousand eight hundred and seventeen, made the subject of special adjudication under the mixed commission established in London : and whereas during the period aforesaid, certain proceedings have been had and decrees have been made without due authority or jurisdiction, in the Vice-Admiralty Court at Sierra Leone, in respect of seizures of the vessels and cargoes belonging to the subjects of Spain, Portugal, and the Netherlands, some or all of them, for alleged contravention of the said treaties or conventions : and whereas it is expedient and necessary to make further provisions and regulations respecting all the aforesaid ships and cargoes, and also for the payment of bounties in certain cases for slaves seized and taken on board the said ships ; be it further enacted, That it shall be lawful for the Commissioners of his Majesty's Treasury to direct the original papers and proceedings respecting all ships, vessels, and cargoes belonging to any of the subjects of Spain, Portugal, or the Netherlands, condemned in the Vice-Admiralty Court at Sierra Leone since the seventeenth day of February one thousand eight hundred and fifteen, to be transmitted to the registry of the High Court of Admiralty of England ; and further, to direct the proceeds of such ships and cargoes, in whosoever possession the same may be, to be remitted and paid for the use of his Majesty, in such manner as the said Commissioners of the Treasury may direct and appoint : and further, that it shall be lawful for the said Commissioners of the Treasury, to institute proceedings in the said High Court of Admiralty, against any person or persons in possession of the said proceeds, for the purpose of obtaining payment of the same, and to enforce the payment thereof by process of the said Court, and to reward the captors in all cases where contravention of treaty has taken place, by granting to them one moiety of the proceeds of every ship and cargo captured as aforesaid ; and the remaining moiety of the said proceeds shall be paid to such person or persons as the said Commissioners shall direct or appoint to receive the same for the use of his Majesty.

Treasury may direct the papers and proceedings respecting vessels and cargoes belonging to the subjects of Spain, Portugal, or the Netherlands, condemned in the Vice-Admiralty Court at Sierra Leone, to be transmitted to the registry of the Admiralty Court of England.

Treasury may enforce payment of proceeds, and reward in certain cases.

*See the marginal note, infra.\**

Treasury may order the charges of proceedings incurred by captors to be paid out of the proceeds, &c.

LXIV. *Superseded by 6 & 7 Vict. c. 53.*

LXV. And be it further enacted, That in every seizure of any ship or vessel for being engaged or employed in the illicit traffic in slaves by any of his Majesty's ships or vessels of war, or any ship or vessel duly commissioned by any governor or lieutenant governor of any of his Majesty's colonies or settlements in which it shall appear to the satisfaction of the Lord High Treasurer or the Commissioners of his Majesty's Treasury for the time being, that such seizure has not been wantonly or improperly made, it shall be lawful for the said Lord High Treasurer or Commissioners of his Majesty's Treasury, or any three or more of them, to order and direct that all the costs, charges, and expences which may have been or may be incurred by the person or persons making such seizures, in any proceedings, or for any matter or thing relating thereto, or arising out of any such seizure, shall be paid and defrayed out of the proceeds of such capture or seizure, or out of any of the proceeds of the said vessels or cargoes, paid or to be paid to the order of the Commissioners of his Majesty's Treasury under the provisions of this act.

Captors of vessels and cargoes condemned for illicit trading in slaves, and the proceeds distributed, shall be confirmed in the possession of the proceeds.

LXVI. And be it further enacted, That wherever ships and cargoes captured by any of his Majesty's ships of war, or by any ship or vessel commissioned by any governor or lieutenant governor of any of his Majesty's colonies or settlements have been in fact condemned for illicit trading in slaves, contrary to the treaties or conventions made between the governments of Spain, Portugal, or the Netherlands, and where distribution of the proceeds thereof has been made prior to the tenth day of July one thousand eight hundred and twenty-one, the said captors shall be confirmed, and are hereby confirmed in the possession of the said proceeds ; any law, statute, or usage to the contrary notwithstanding.

LXVII. And be it further enacted, That where any ship or vessel employed or engaged in illicit traffic in slaves, in violation of any of the said conventions herein-before mentioned, shall be seized by any ship or vessel belonging to his Majesty, duly authorized under the provisions of the said conventions to make such seizure, and shall be afterwards condemned by any of the Commissioners

Captors of vessels shall, after the same are condemned, be entitled to the

\* LXIV. Captors not entitled to such rewards where the Commissioners for Portuguese claims award indemnification.

moiety of the proceeds belonging to his Majesty.

A bounty of 10*l.* for every slave found on board of vessels seized and condemned.\*

*See the marginal note, infra.* † Proceeds and bounties to be distributed as the Treasury shall direct.

Parties claiming benefit under this act may resort to the Court of Admiralty.

Where slaves taken as prize shall not have been condemned, or shall not have been delivered over, the Treasury may allow one moiety of the bounty.

Where judgment shall be given against the seizer, or the seizure shall be relinquished, the Treasury may direct payment of the costs and damages.

Treasury may direct payment of any sum awarded to be due on account of

appointed in virtue of the treaties or conventions aforesaid, there shall be paid to the captors the moiety to which his Majesty is entitled, under the said treaties or conventions, of the net proceeds of the said ship and cargo; the said moiety of the said net proceeds to be distributed in the manner hereafter directed for the distribution of bounties on slaves taken on board the said vessels.

LXVIII.\* And be it further enacted, That there shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland, a bounty of ten pounds of lawful money of Great Britain for every man, woman, and child slave seized and found on board any ship or vessel taken, and by the Commissioners appointed in virtue of any of the said treaties or conventions, condemned for illicit traffic in slaves, in violation of any of the provisions of the said conventions, such bounty to be issued and paid by order from the said Commissioners of his Majesty's Treasury, and to be distributed to and amongst the captors aforesaid, in such manner and proportions as his Majesty, his heirs and successors, shall think fit to order and direct, by any Order or Orders in Council, or by any proclamation or proclamations to be made for that purpose.

LXIX. *Expired.*

LXX. Provided always, and be it further enacted, That in all cases where any bounty or bounties, or any proceeds are by virtue of this act given to any capturing vessel duly commissioned by any governor or lieutenant governor of any of his Majesty's colonies or settlements, the said proceeds and bounty or bounties shall be distributed in such manner as the Commissioners of his Majesty's Treasury shall be pleased to direct or appoint.

LXXI. Provided also, and be it further enacted, That any party or parties claiming any benefit, by way of bounty or share of the proceeds, for the seizure of any Spanish, Portuguese, or Netherland vessels, for violation of treaty or convention, shall and may resort to the High Court of Admiralty for the purpose of obtaining the judgment of the said Court in that behalf; and that it shall and may be lawful for the Judge of the said High Court of Admiralty to determine thereon, and also to hear and determine any question of joint-capture which may arise upon any seizure of slaves, and enforce any decree or sentence of any of the Mixed Commission Courts established or to be established in pursuance of treaties or conventions with foreign powers, and the decrees or sentences of the Vice-Admiralty Court relating to any seizure under this act.

LXXII. And be it further enacted, That where any slaves, or persons treated, dealt with, carried, kept, or detained as slaves, have been prior to the passing of this act or shall be hereafter taken as prize of war, or trading contrary to the provisions of the treaties with foreign powers, or as liable to forfeiture for any offence committed against this act, but who shall not have been condemned, or shall not have been delivered over in consequence of death, sickness, or other inevitable circumstance, it shall and may be lawful for the said Commissioners of his Majesty's Treasury, if to their discretion it shall seem meet, by warrant, signed by any three or more of them, to direct the payment out of the consolidated fund of the United Kingdom of Great Britain and Ireland, of one moiety of the bounty which would have been due in each case respectively if the said slaves had been delivered over.

LXXIII. And be it further enacted, That when any seizure shall be made, or prosecution instituted as or for the violation of any of the provisions of this act, and judgment shall be given against the seizer or prosecutor, or such seizure shall be relinquished by him, it shall be lawful for the said Lords Commissioners of his Majesty's Treasury, if to their discretion it shall seem meet, by warrant signed by any three or more of them, to direct payment to be made out of the consolidated fund of the United Kingdom of Great Britain and Ireland, of such costs, damages, and expences as the said seizer or prosecutor may be liable to pay in respect of such seizure, or any proportionate part thereof.

LXXIV. And be it further enacted, That it shall and may be lawful for the Lords Commissioners of his Majesty's Treasury, if to their discretion it shall seem meet, by warrant, signed by three or more of them, to direct payment to be made out of the consolidated fund of the United Kingdom of Great Britain and Ireland, of any sums of money awarded by the Mixed Commission Courts to be due on account of any unlawful seizure or detention by any of his Majesty's

\* Repealed as to the rates of bounties by 1 W. 4. c. 55., which grants other bounties in lieu thereof. (See Appendix, No. XXII.)

† LXIX. Such bounty of 10*l.* shall be paid for every slave found on board of vessels of Portugal, Spain and Netherlands captured within the periods herein mentioned.

authorized cruisers: Provided always, that nothing herein contained shall exempt the seizer from his liability to make good the payments so made, when lawfully called upon by order of the said Commissioners.

LXXV. And be it further enacted, That the registrars of the several Vice-Admiralty Courts, and also the Commissary Judges and Commissioners of Arbitration of the several Mixed Commission Courts respectively, shall, on the first day of January and first day of July in every year, transmit to the said Lords Commissioners of his Majesty's Treasury a list or return of all cases which shall have been adjudged in the said Courts respectively under this act, during the six months preceding, together with the names of the seizors, and the dates of the seizures and sentences respectively, together with an account of the state of the property, according to the schedule marked (A.) to this act annexed.

LXXVI. And be it further enacted, That all sums of money accruing to his Majesty from or on account of any forfeiture, penalty, or condemnation under this act, shall be paid over to such person or persons as his Majesty, his heirs and successors, may please to appoint, for the use of his Majesty, his heirs and successors.

LXXVII. And be it further enacted, That all the provisions, rules, regulations, forfeitures, and penalties respecting the delivery by prize agents of accounts for examination, and the distribution of prize money, and the accounting for and paying over the proceeds of prize and the per-centage due thereon to Greenwich Hospital, shall be and are hereby extended to all bounties and proceeds to be distributed under the provisions of this act to the officers and crews of any of his Majesty's ships or vessels of war, whether the said bounty and proceeds shall be paid to prize agents, or to any other persons authorized to receive the same for the use and benefit of the officers and crews of any of his Majesty's ships or vessels of war.

LXXVIII. And be it further enacted, That if any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons, for any thing done in pursuance of the said treaties, conventions, or the instructions or regulations thereto annexed, or of this act, in as far as it relates thereto, the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of the said treaties, conventions, instructions, or regulations, or of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited, or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall recover treble costs, and have the like remedy for the same as defendants have in other cases by law.

LXXIX. And also that nothing in this act contained in relation to the said treaties, conventions, regulations, or instructions aforesaid, shall extend, or be deemed or construed in anywise to alter, suspend, affect, relax, or repeal any of the clauses, penalties, forfeitures, or punishments contained and enacted, in any other part of this act, but that all such clauses, regulations, penalties, forfeitures, and punishments therein contained shall remain in full force and virtue.

LXXX. And be it further enacted, That nothing in the other parts of this act contained shall extend or be deemed or construed in anywise to alter, suspend, affect, relax, or repeal any of the clauses, penalties, forfeitures, or punishments contained, enacted, or confirmed in that part of this act which relates to the said treaties, conventions, regulations, or instructions aforesaid.

LXXXI. And be it further enacted, That this act may be repealed, altered, or amended during this present session of parliament.

LXXXII. And be it further enacted, That this act shall commence and have effect from and after the first day of January in the year of our Lord one thousand eight hundred and twenty-five.

unlawful seizures. Liability of seizors not taken away.

Registrars of Vice-Admiralty Courts, &c. to transmit to the Treasury a return of all cases adjudged for the preceding six months, with state of the property according to schedule (A.)

Forfeitures to his Majesty to be paid over as he shall direct.

Regulations to which prize agents are liable shall be extended to bounties and proceeds to be distributed under this act.

In all actions commenced under this act defendant may plead the general issue. Treble costs.

Nothing in this act contained relating to the said treaties, &c. shall extend to alter any other part of this act.

Nothing in this act contained shall extend to alter any of the said treaties, &c.

Act may be altered this session.

Commencement of this act.

## SCHEDULE (A.)

| Date of seizure. | Property seized. | Seizor. | Date of sentence. | Decretal part of sentence, whether forfeiture or restitution. | Whether property condemned has been sold or converted, and whether any part remains unsold, and in whose hands the proceeds remain. |
|------------------|------------------|---------|-------------------|---|---|
|                  |                  |         |                   |   |   |



## No. XXII.

1 W. 4. c. 55. (16th July, 1830.)

*An Act to reduce the Rate of Bounties payable upon the Seizure of Slaves.*

WHEREAS by an act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Slave Trade:" and by another act passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, intituled "An Act to carry into execution a Convention between His Majesty and the Emperor of Brazil, for the Regulation and final Abolition of the African Slave Trade," certain bounties were directed to be paid for the seizure of slaves; as in the said acts are more particularly specified and set forth: And whereas it is expedient to reduce the different rates of bounties payable under the said acts; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that for all slaves seized from and after the fifth day of October one thousand eight hundred and thirty, the different rates of bounties heretofore granted under the before-recited acts shall be and the same are hereby repealed; and in lieu of the former bounties there shall be paid, out of the consolidated fund of the United Kingdom of Great Britain and Ireland, to the seizer, or to the seizer and governor respectively, in those cases where the governor of any of his Majesty's colonies or plantations is or may be entitled, a bounty of five pounds each of lawful money of Great Britain, upon every man, woman, and child slave seized and condemned as forfeited or delivered over agreeably to the several provisions of the above-recited acts.

5 G. 4. c. 113.

7 & 8 G. 4.  
c. 74.

Bounties  
granted by  
former acts  
repealed, and  
other bounties  
granted in lieu  
thereof.

II. Provided always, and be it further enacted, That where any slaves shall be seized after the said fifth day of October one thousand eight hundred and thirty, and shall be considered liable to forfeiture under the provisions of the treaties with Portugal, Spain, the Netherlands, and the Brazils, but who shall not have been pronounced forfeited in consequence of death, sickness, or other inevitable circumstance, it shall and may be lawful for the Commissioners of his Majesty's Treasury, if to their discretion it shall seem meet, to direct payment of one moiety of the bounty which would have been due if the said slaves had been proceeded against and pronounced forfeited.

Where slaves  
die before de-  
cree of for-  
feiture is pro-  
nounced, a  
moiety of the  
bounty may be  
allowed.

## No. XXIII.

1 &amp; 2 Vict. c. 47. (27th July, 1838.)

*An Act for the better and more effectually carrying into effect the Treaties and Conventions made with Foreign Powers for suppressing the Slave Trade.*

WHEREAS by additional articles to various treaties entered into between his late Majesty and her present Majesty and certain foreign powers and states, for the prevention of the traffic in slaves, it has been stipulated, that all vessels which shall be seized and condemned, under any of the provisions of the said treaties or conventions, and which under the said treaties were directed to be sold by public sale, shall, by virtue of such additional articles, be entirely demolished and broken up, and the materials thereof publicly sold in separate parts, as well as the cargo, for the profit of the governments engaged in such treaties or conventions: And whereas treaties or conventions have been entered into by his late Majesty and

Queen's moiety of proceeds to be paid to the captors.

Bounty on tonnage of slave ships captured and demolished.

Where no slaves are on board a ship seized an additional bounty to be paid.

Bounties on tonnage to be paid out of the consolidated fund.

Proof of tonnage.

Distribution of bounty and prize money.

by her present Majesty with various powers and states, under the authority of which the ships or vessels of the subjects of those states, and also the ships and vessels of subjects of the Crown of the United Kingdom, may be seized and condemned, when equipped in the manner described in the said treaties and conventions, although they shall have no slaves on board : And whereas by various acts of parliament certain bounties are payable to the captors of ships having slaves on board for every slave captured under treaties made with foreign powers authorizing such capture : And whereas it is expedient that her Majesty should be empowered to grant certain bounties to the commanders, officers, and crews of her Majesty's ships seizing such ships or vessels : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any ship or vessel employed or engaged in illicit traffic in slaves, in violation of any of the said treaties or conventions, shall have been or may be seized by any ship or vessel belonging to her Majesty duly authorized to make such seizure, and making the same, and shall have been or shall be afterwards condemned by any of the commissioners appointed in virtue of the said treaties or conventions, there shall be paid to the captors the moiety to which her Majesty is entitled of the net proceeds of the said ship and cargo.

II. And be it enacted, That where any ship or vessel which shall have been or may be seized and condemned under the provisions of any treaty or convention made or to be made with any foreign power, or additional article to any such treaty or convention, shall have been or shall be entirely demolished, and the materials thereof publicly sold in separate parts, as well as her cargo, there shall be paid to the commanders, officers, and crews of her Majesty's ships authorized to make and making such seizures, in addition to the amount which may be payable in respect of the moiety of the proceeds of such sale as herein-before mentioned, a further bounty on the tonnage of such ship or vessel at the rate of one pound ten shillings for every ton of such tonnage.

III. And be it enacted, That where any ship or vessel having no slaves on board shall have been or may be seized and condemned under the provisions of any treaty or convention or any additional articles made or to be made with any foreign power for the abolition of the slave trade, there shall be paid to the commanders, officers, and crews of her Majesty's ships authorized to make and making such seizure an additional bounty upon the tonnage of such ship or vessel at the rate of four pounds for every ton, and the tonnage of all such vessels shall be estimated or ascertained according to the mode of ascertaining the admeasurement of British vessels, either by the principal officer of the Customs at the port where the vessel may be at the time of condemnation, or, in default thereof, by the best evidence which can be obtained, to be certified by the commissioners by whom such condemnation shall be pronounced : Provided always, that in every case in which any ship or vessel shall be seized with slaves on board in which the bounty calculated upon the number of slaves shall be less than the bounty calculated upon the tonnage, the commanders of her Majesty's ships making the seizure may elect to take the bounty calculated according to tonnage, in lieu and instead of the bounty which would be payable upon the number of slaves on board.

IV. And be it enacted, That all such bounties on tonnage shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland to the commanders, officers, and crews of her Majesty's ships authorized to make such seizures under the provisions of any such treaties or conventions, and such bounties shall be issued and paid by order from the Commissioners of her Majesty's Treasury.

V. Provided always, and be it enacted, That in order to entitle the captors to receive the said bounty money the tonnage of the ship or vessel so seized, delivered over, and condemned shall be proved to the Commissioners of her Majesty's Treasury by producing a copy duly certified of the sentence or decree of condemnation, or by such documentary or other evidence as they may deem satisfactory.

VI. And be it enacted, That the bounties payable under this or any other act of parliament for the seizure of slaves and vessels fitted out for or engaged in the traffic of slaves shall be paid to and distributed amongst the commanders, officers, and crews of her Majesty's ships engaged in the seizure thereof in such manner and proportion and to and amongst such persons as by any order in council or proclamation of his late Majesty King William the Fourth at present in force hath been, or by any order in council or proclamation of her present Majesty, her heirs and successors, shall be for that purpose ordered and directed ; and that all the provisions in regard to prize money, and other money in the nature thereof,

including all rules and regulations relating to the delivery by agents of accounts of prize and other money as aforesaid, and to the examination of such accounts, and to the distribution of prize or other money, and to the accounting for and paying over the unclaimed and forfeited shares, and to the per-centage payable in aid of the Greenwich out-pension fund for the benefit of the old and invalid seamen who have served in the Royal Navy, which under any act or acts of parliament are now in force, and all penalties and forfeitures to which agents and others are made subject by any such acts, shall be and the same are hereby extended to all bounties and proceeds payable and distributable under the provisions of this act to the commanders, officers, and crews of any of her Majesty's ships or vessels.

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No. XXIV.

2 & 3 Vict. c. 73.\* (24th August, 1839.)

*An Act for the Suppression of the Slave Trade.*

WHEREAS it is expedient that persons employed under the authority of her Majesty in the detention and seizure of vessels engaged in the slave trade should be indemnified against the consequences of vexatious suits and actions with which they may be harassed: And whereas it is also expedient that power should be given to the High Court of Admiralty and to Courts of Vice-Admiralty to adjudicate upon vessels and their cargoes captured for having been engaged in the slave trade, and also upon slaves taken on board thereof: And whereas it is further expedient to extend the provisions of certain acts of parliament which empower her Majesty to grant bounties for the capture of vessels engaged in the slave trade: And whereas her Majesty has been pleased to issue orders to her cruisers to capture Portuguese vessels engaged in the slave trade, and other vessels engaged in the slave trade not being justly entitled to claim the protection of the flag of any state or nation: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for any person or persons in her Majesty's service, under any order or authority of the Lord High Admiral or of the Commissioners for executing the office of Lord High Admiral of Great Britain, or of any one of her Majesty's secretaries of state, to detain, seize, and capture any such vessels, and the slaves, if any found therein, and to bring the same to adjudication in the High Court of Admiralty of England, or in any Vice-Admiralty Court within her Majesty's dominions, in the same way as if such vessels and the cargoes thereof were the property of British subjects; and all persons concerned in or advising the giving of, or giving or issuing, any such order or authority, or acting under or in pursuance thereof, or carrying the same into execution, shall be and they are hereby indemnified: Provided always, that no such Court shall proceed to condemn any vessel not being British or Portuguese, the owners or master whereof shall establish to the satisfaction of such Court that they are entitled to claim the protection of the flag of a state other than Great Britain or Portugal.

Authorizing the seizure of certain vessels engaged in the slave trade, and indemnifying persons acting under orders given for that purpose.

II. And be it enacted, That no action, suit, writ, or proceeding whatever shall be maintained or maintainable in any Court in the United Kingdom, or in any of her Majesty's dominions, colonies, or settlements out of the United Kingdom against any person acting under such order or authority, for or on account of being concerned in any search, detention, seizure, capture, or condemnation of any vessel which shall have been found with slaves on board, or equipped for the slave trade, or in the arrest or detention of any person found on board such vessel, or for or on account of the cargo thereof, or any act, matter, or thing done in relation to such search, detention, seizure, capture, condemnation, or arrest.

Actions against persons for seizing vessels engaged in the slave trade not to be maintained.

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\* Repealed as to Portugal by 5 & 6 Vict. c. 114.

For trial of  
vessels engaged  
in the slave  
trade.

Circumstances  
under which  
vessels are to  
be liable to  
seizure.

III. And be it enacted, That it shall be lawful for the High Court of Admiralty of England, and for all Courts of Vice-Admiralty in any colonies or dominions of her Majesty beyond the seas, to take cognisance of and try any such Portuguese vessel which shall be detained or captured either to the north or to the south of the equator, under any such order or authority, and any vessel which shall not establish to the satisfaction of such Court that she is justly entitled to claim the protection of the flag of any state or nation, and to condemn any such vessel, and adjudge as to the slaves found therein, in like manner, and under such and the like rules and regulations, as are contained in any act or acts of parliament in force in relation to the suppression of the slave trade by British-owned ships, as fully and effectually, to all intents and purposes, as if all the powers, authorities, and provisions contained in such acts were repeated and re-enacted in this act as to such High Court of Admiralty or Courts of Vice-Admiralty.

IV. And be it enacted, That every such vessel shall be subject to seizure, detention, and condemnation, under any such order or authority, if in the equipment of such vessel there shall be found any of the things herein-after mentioned; namely,

First — Hatches with open gratings, instead of the close hatches which are usual in merchant vessels :

Secondly — Divisions or bulkheads in the hold or on deck more numerous than are necessary for vessels engaged in lawful trade :

Thirdly — Spare plank fitted for being laid down as a second or slave deck :

Fourthly — Shackles, bolts, or handcuffs :

Fifthly — A larger quantity of water in casks or in tanks than is requisite for the consumption of the crew of the vessel as a merchant vessel :

Sixthly — An extraordinary number of water casks, or of other vessels for holding liquid, unless the master shall produce a certificate from the custom house at the place from which he cleared outwards, stating that a sufficient security had been given by the owners of such vessel that such extra quantity of casks or of other vessels should only be used for the reception of palm oil, or for other purposes of lawful commerce :

Seventhly — A greater quantity of mess tubs or kids than are requisite for the use of the crew of the vessel as a merchant vessel :

Eighthly — A boiler of an unusual size, and larger than requisite for the use of the crew of the vessel as a merchant vessel, or more than one boiler of the ordinary size :

Ninthly — An extraordinary quantity either of rice or of the flour of Brazil, manioc, or cassada, commonly called farinha, of maize or of Indian corn, or of any other article of food whatever, beyond what might probably be requisite for the use of the crew; such rice, flour, maize, Indian corn, or other article of food not being entered on the manifest as part of the cargo for trade :

Tenthly — A quantity of mats or matting larger than is necessary for the use of the crew of the vessel as a merchant vessel :

Any one or more of these several circumstances, if proved, shall be considered as *prima facie* evidence of the actual employment of the vessel in the transport of negroes or others, for the purpose of consigning them to slavery, and the vessel and cargo shall thereupon be condemned to the Crown, unless it be established by satisfactory evidence on the part of the master or owners, that such vessel was, at the time of her detention or capture, employed on some legal pursuit, and that such of the several things above enumerated as were found on board of such vessel at the time of her detention, or had been put on board on the voyage on which, when captured, such vessel was proceeding, were needed for legal purposes on that particular voyage.

V. And be it enacted, That any ship or vessel which shall be condemned under any such order or authority as aforesaid may be taken into her Majesty's service, upon payment of such sum as the Lord High Admiral or the Lords Commissioners of the Admiralty shall deem a proper price for the same, or if not so taken, shall be broken up and be entirely demolished, and the materials thereof shall be publicly sold in separate parts.

VI. And be it enacted, That the several enactments set forth in an act passed in the fifth year of his late Majesty King George the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade;" and also in an act of first of King William the Fourth, chapter fifty-five, intituled "An Act to reduce the Rate of Bounties payable upon the Seizure of Slaves;"

Vessels con-  
demned to be  
sold for her  
Majesty's ser-  
vice or broken  
up.

Extending  
provisions of  
5 G. 4. c. 113.  
11 G. 4. &  
1 W. 4. c. 55.

and also in an act of the first and second of her present Majesty, chapter forty-seven, intituled "An Act for the better and more effectually carrying into effect the Treaties and Conventions made with Foreign Powers for suppressing the Slave Trade;" relative to persons giving false evidence being guilty of perjury; to maintaining and providing for captured slaves pending adjudication; to condemning slaves as forfeiture to the Crown; to the manner of disposing of the slaves subsequent to adjudication; to rewarding the captors with a bounty on the vessel as well as on the slaves; to authorizing the Commissioners of her Majesty's Treasury, if to their discretion it shall seem meet, to order payment of one moiety of the bounty, where slaves may not have been condemned or delivered over in consequence of death, sickness, or other inevitable circumstance; to the mode of obtaining such bounties; to authorizing the High Court of Admiralty to determine as to doubtful claims of bounty, and also on any question of joint capture; and to enforcing any decree or sentence of any Vice-Admiralty Court, shall be applied, *mutatis mutandis*, to seizures of vessels under this act, in like manner, form, and effect as if all the said matters and things, and all the said powers, and penalties, provisions, enactments, and clauses, were repeated and set forth, *mutatis mutandis*, in this act.

and 1 & 2 Vict.  
c. 47. to vessels  
seized under  
this act.

# No. XXV.

5 & 6 Vict. c. 91. (10th August, 1842.)

*An Act to amend an Act of the Second and Third Years of her Majesty, for the Suppression of the Slave Trade.*

WHEREAS vessels engaged in the slave trade, together with the goods, wares, and merchandizes laden therein, have been captured by her Majesty's cruisers, and condemned to the Crown, under or by virtue of the provisions of the act passed in the second and third years of the reign of her present Majesty, intituled "An Act for the Suppression of the Slave Trade;" and whereas it is expedient that authority be given to confer suitable rewards upon persons who have been or may be hereafter so employed in the seizure and detention of such vessels as aforesaid: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the proceeds to which her Majesty is entitled of every ship and vessel, and of the goods, wares, merchandize, and effects on board of every ship and vessel, which may have been or may be hereafter condemned under or by virtue of the provisions of the said act passed in the second and third years of the reign of her present Majesty, shall be paid to such person or persons as the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland shall direct or appoint to receive the same.

2 & 3 Vict.  
c. 73.

Proceeds of  
vessels and  
cargoes to be  
paid to such  
person or per-  
sons as Trea-  
sury may  
appoint to  
receive the  
same.

II. And be it enacted, That the net proceeds of every ship and cargo so condemned, after deducting all necessary expences, shall be paid to the captors, to be distributed to and amongst the commanders, officers, and crews of her Majesty's ships engaged in the seizure thereof, in such manner and proportion, and to and amongst such persons, as by any order in council or proclamation in force at the time of the capture, or by any order in council or proclamation of her present Majesty, her heirs and successors, for that purpose ordered and directed.

Net proceeds  
to be paid to  
captors.

III. And be it enacted, That all the provisions in regard to prize money, and other money in the nature thereof, including all rules and regulations relating to the delivery by agents of accounts of prize and other money as aforesaid, and to the examination of such accounts, and to the distribution of prize or other money, and to the accounting for and paying over the unclaimed and forfeited shares, and to the per-centage payable in aid of the Greenwich out-pension fund for the benefit of the old and invalid seamen who have served in the Royal Navy, which under any act or acts are now in force, and all penalties and forfeitures to which agents and others are made subject by any such acts, shall be and

Distribution of  
bounty and  
prize money.

Registrars of Vice-Admiralty Courts to transmit every six months returns of all cases adjudged, with state of the property.

Parties claiming benefit under this act may resort to the Court of Admiralty.

Where judgment against the seisor, or the seizure relinquished, the Treasury may direct payment of costs, &c.

Not to limit or annul the provisions of 2 & 3 Vict. c. 73.

the same are hereby extended to all bounties and proceeds payable and distributable under the provisions of the said recited act of the second and third years of the reign of her present Majesty, and of this act, to the commanders, officers, and crews of any of her Majesty's ships or vessels.

IV. And be it enacted, That the registrars of the several Vice-Admiralty Courts respectively shall, on the first day of January and first day of July in every year, transmit to the said Commissioners of her Majesty's Treasury a list or return of all cases which shall have been adjudged in the said Courts respectively under the said recited act of the second and third years of the reign of her present Majesty during the six months preceding, together with the names of the seizors and the dates of the seizures and sentences respectively, together with an account of the state of the property, according to the schedule marked (A.) to this act annexed.

V. And be it enacted, That any party or parties claiming any benefit by way of bounty or share of the proceeds, for any seizure under the said act of the second and third years of the reign of her present Majesty, shall and may resort to the High Court of Admiralty for the purpose of obtaining the judgment of the said Court in that behalf; and that it shall and may be lawful for the Judge of the said High Court of Admiralty to determine thereon, and also to hear and determine any question of joint capture which may arise upon any such seizure, and enforce any decree or sentence of any Vice-Admiralty Court relating to any seizure under the said act.

VI. And be it enacted, That when any seizure shall be made or prosecution instituted as or for the violation of any of the provisions of the said recited act, and judgment shall be given against the seisor or prosecutor, or such seizure shall be relinquished by him, it shall be lawful for the said Commissioners of her Majesty's Treasury if to their discretion it shall seem meet, to direct payment to be made of such costs, damages, and expences as to the said seisor or prosecutor may be liable to pay in respect of such seizure, or any proportionate part thereof.

VII. Provided always, and be it enacted, That nothing in this act contained shall limit or annul, or be deemed or construed to limit or annul, any of the provisions of the said act passed in the second and third years of the reign of her present Majesty, or of any other act or acts referred to therein.

SCHEDULE (A.)

| Date of seizure. | Property seized. | Seizor. | Date of sentence. | Decretal part of sentence, whether forfeiture or restitution. | Whether property condemned has been sold or converted, and whether any part remains unsold, and in whose hands the proceeds remain. |
|------------------|------------------|---------|-------------------|---|---|
|                  |                  |         |                   |   |   |

## No. XXVI.

7 &amp; 8 Vict. c. 112. (5th September, 1844.)

*An Act to amend and consolidate the Laws relating to Merchant Seamen; and for keeping a Register of Seamen.*

The act 5 & 6  
W. 4. c. 19.  
repealed from  
and after  
1st Jan. 1845,  
except, &c.

No seaman to  
be taken to sea  
without a  
written agree-  
ment, or with-  
out a register  
ticket being  
obtained from  
such seaman.

Agreement to  
be read over  
and explained  
to seamen.

Regulations  
respecting form  
of agreements,  
and how to be  
disposed of.

WHEREAS the prosperity, strength, and safety of this United Kingdom and her Majesty's dominions do greatly depend on a large, constant, and ready supply of seamen; and it is therefore expedient to promote the increase of the number of seamen, and to afford them all due encouragement and protection, and for this purpose to amend and consolidate the laws relating to them; and it is also expedient to keep a register of seamen: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of January one thousand eight hundred and forty-five, from which day this act shall commence and take effect, an act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," shall be and the same is hereby repealed, except so far as such act repeals the acts thereby repealed, and except so far as relates to the establishment, maintenance, and regulations of the office called "The General Register Office of Merchant Seamen:" Provided always, that all offences which shall have been committed and all penalties and forfeitures which shall have been incurred previously to the commencement of this act shall and may be punishable and recoverable respectively under the above-mentioned act as if the same had not been repealed; provided also, that all acts and things made, done, or executed under or by virtue of and in accordance with the provisions of the said act passed in the sixth year of the reign of his late Majesty King William the Fourth, prior to the commencement of this act, shall be good, valid, and effectual to all intents and purposes.

II. And be it enacted, That it shall not be lawful for any master of any ship, of whatever tonnage or description, belonging to any subject of her Majesty, proceeding to parts beyond the seas, or of any British registered ship of the burden of eighty tons or upwards employed in any of the fisheries of the United Kingdom, or in proceeding coastwise, or otherwise, from one part of the United Kingdom to another, to carry to sea any seaman as one of his crew or complement (apprentices excepted), unless the master of such ship shall have first made and entered into an agreement in writing with such seaman, specifying what wages such seaman is to be paid, the quantity of provisions he is to receive, the capacity in which he is to act or serve, and the nature of the voyage in which the ship is to be employed, so that such seaman may have some means of judging of the period for which he is likely to be engaged; and that such agreement shall be properly dated, and shall be signed by such master in the first instance, and by the seamen respectively at the port or place where they shall be shipped; and that the signature of each of the parties thereto shall be duly attested by one witness at the least, and that the master shall cause the agreement to be read over and explained to every such seaman in the presence of such witness, before such seaman shall execute the same; and it shall not be lawful for the master of any ship to carry to sea any seaman, being a subject of her Majesty, until he shall also have first obtained from every such seaman or other person his register ticket (to be procured as herein-after mentioned), which ticket the said master is hereby required to retain (except in the cases herein-after provided) until the service of such seaman shall have terminated, and at the termination of such service the said master shall return the register ticket to him.

III. And be it enacted, That in the case of any ships, of whatever tonnage or description, belonging to any subject or subjects of her Majesty, and proceeding to parts beyond the seas, (except as herein-after provided,) the agreement shall be in the form set forth in schedule (A.) to this act annexed, and shall contain the several particulars therein mentioned or required; and the master shall, within twenty-four hours after the ship's arrival at her final port of destination in this United Kingdom, deliver or cause to be delivered to the collector or comptroller of the Customs at and for such port every agreement so made as aforesaid,



or a true copy thereof, and of every endorsement thereon, the agreement, or copy thereof, in either case, to be certified as such by such master or owner, and also by the mate or next officer (if any) of such ship or vessel, each of whom is hereby required to sign such certificate in the presence of one attesting witness at the least; and if the original agreement be delivered to such collector or comptroller he shall retain the same until all the wages to which the agreement relates shall be paid or satisfied, and then he shall transmit such original agreement to the registrar of seamen; and no such ship shall be cleared inwards by the tide surveyor or other officer until the master shall produce and show a certificate from such collector or comptroller (which he is hereby required to give) to the effect that he has delivered his agreement, or an attested copy thereof, as aforesaid; and the tide waiters left on board shall be maintained at the expense of the master or owner until such certificate shall be produced and shown, or until it shall be proved to the satisfaction of the tide surveyor or other officer that such agreement or agreements, or such copy thereof, has or have been so delivered as aforesaid; and in the case of any ship employed in fishing on the coasts of the United Kingdom, or proceeding from one part of the United Kingdom to another, or proceeding to any of the Islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any place on the Continent of Europe between the river Elbe inclusive and Brest, the agreement shall be in the form set forth in schedule (B.) to this act annexed, and shall contain the several particulars therein mentioned or required; and every such agreement shall not extend beyond the thirtieth of June and the thirty-first of December in each year, or on arrival in any port of the United Kingdom after the same respective dates; and the owner or master of every such ship as last aforesaid shall, within twenty-one days next after the thirtieth day of June and the thirty-first day of December in each year, transmit or deliver, or cause to be transmitted or delivered, to the collector or comptroller of the Customs of any port of the United Kingdom, every agreement made within the six months next preceding such thirtieth day of June and thirty-first day of December respectively, or a true copy thereof, and of every endorsement thereon, certified as aforesaid; and such collectors and comptrollers respectively shall and are hereby required to give a receipt (specifying the nature of the document) for every agreement or other document, or such copy thereof, to the master, owner, or person so delivering the same; and no master or owner, after the expiration of the said twenty-one days, shall be entitled to or receive a transire, or any other Customs document necessary for the conduct of the business of the ship, until he shall produce and show such receipt, or shall prove to the satisfaction of the officer that every such agreement, or such copy thereof as aforesaid, has been duly delivered as aforesaid; and the owner or master of every ship under the burden of eighty tons, employed as last aforesaid, who is not required by this act to enter into any written agreement with his crew, shall, before employing any seaman or other person in the service of his ship, receive from every such seaman or other person his register ticket, and shall retain the same until the service of such seaman or other person shall have expired, and at the expiration of such service the master shall return the register ticket to the person entitled thereto.

IV. And be it enacted, That if any master or owner shall carry out to sea any seaman (apprentices excepted) without having first entered into the required agreement with such seaman, or if any master shall not obtain from any seaman or other person, being a subject of her Majesty, his register ticket, according to the provisions of this act, he shall in either and every of such cases forfeit and pay the sum of ten pounds for and in respect of every such seaman; and if any master or owner shall neglect to cause such agreement to be read over and explained to such seaman before the signing or execution thereof by such seaman, the said master or owner shall for each neglect forfeit and pay the sum of five pounds for every such seaman; and if any master or owner shall neglect or omit to deliver or cause to be delivered to such collector or comptroller any such agreement, or such copy thereof as aforesaid, or shall not deliver up any register ticket to the person entitled to it at the expiration of his service, or otherwise, as required by this act, he shall for every such neglect, omission, or offence forfeit and pay the sum of ten pounds, or if any master or owner shall deliver or cause to be delivered a false copy of the agreement he shall for every such offence forfeit and pay the sum of twenty pounds.

V. And be it enacted, That no seaman, by reason of any agreement, shall forfeit his lien upon the ship, nor be deprived of any remedy for the recovery of his wages to which he would otherwise be entitled against any person or persons whatever; and no agreement contrary to or inconsistent with this act, nor any

No ship to be cleared inwards until receipt for agreement is produced.

Agreements in form of schedule (B.) not to extend beyond 30th June and 31st December.

Owner or master to deliver such agreements or copies thereof half-yearly.

Vessel not to receive transire, &c. until receipt for such agreements be produced.

Masters of vessels under eighty tons in coasting or fishing trade to receive tickets from seamen.

Penalty for default.

Seamen not to be deprived of legal remedies. No agreement contrary to the

act, or to forego salvage, to be valid; and certified copy of agreement to be evidence.

Seamen not bound to produce agreement.

Seamen refusing to join, or to proceed in the ship, or absenting themselves therefrom, may be committed to gaol, or be sent on board.

When seaman committed to prison his ticket to be delivered to gaoler.

Forfeiture for temporary absence from or refusal to perform his duty.

Proviso.

How amount of forfeiture is to be ascertained when seamen contract for the voyage.

clause, contract, or engagement whereby any seaman shall consent or promise to forego or give up any right or claim to wages in the case of freight earned by a ship subsequently lost, or any right or claim to salvage or reward for salvage services, or such proportion of salvage or reward for salvage services as shall or may be due to him by decree or award, or otherwise, shall be valid or binding on such seaman; and every copy of an agreement so certified and delivered as aforesaid shall in all cases be received and taken as evidence of the contents of the agreement for and on behalf of the seaman; and no seaman shall in any case be required to produce such agreement, or such copy as aforesaid, or to give notice for the production thereof; but in case the agreement shall not be produced and proved he shall be at liberty to prove the contents or purport thereof, or to establish his claim by other evidence, according to the nature of the case.

VI. And be it enacted, That in case a seaman, whether before the commencement or during the progress of any voyage, shall at any time neglect or refuse to join the ship on board of which he shall have engaged to serve, or shall refuse to proceed to sea in such ship, or shall absent himself therefrom without leave, or shall desert, it shall be lawful for any justice of the peace in and for any of her Majesty's dominions, or the territories under the government of the East India Company, where or near to the place where such ship shall happen to be, or where such seaman shall be found, and such justice is hereby required, upon complaint made upon oath by the master, mate, or owner, or his agent, to issue his warrant, and cause such seaman to be apprehended, and brought before him; and in case such seaman shall not give a reason to the satisfaction of such justice for his neglect, refusal, or absence, as the case may be, or in case of desertion, it shall be lawful for any such justice, upon due proof of such neglect, refusal, absence, or desertion, to commit such seaman to prison or to the house of correction, there to be imprisoned, with or without hard labour, at the discretion of such justice, for a period not exceeding thirty days; or it shall be lawful for the said justice, if he shall so think fit, at the request of the master, mate, or owner, or his agent, instead of committing such seaman, to cause him to be conveyed on board the said ship, or to be delivered to the master, mate, or owner, or his agent, for the purpose of being so conveyed and proceeding on the voyage, and also to award to the master or owner such costs incurred in the apprehension of the seaman as to such justice shall seem reasonable, not exceeding in any case the sum of forty shillings, which shall be chargeable against and may be deducted from the wages of such seaman; and whenever any seaman shall be committed to prison or to any house of correction, the justice shall cause his register ticket to be delivered to the governor or keeper of such prison or house of correction, who shall retain the same during the period of the seaman's imprisonment, and at the expiration of such period shall return the register ticket to the seaman; and whenever a seaman shall be sentenced to death or transportation the officer having the custody of such seaman shall transmit his register ticket to the registrar of seamen.

VII. And be it enacted, That if any seaman during the time or period specified for his service shall wilfully and without leave absent himself from the ship, or otherwise from his duty, he shall (in all cases not of desertion, or not treated as such by the master,) forfeit out of his wages the amount of two days pay, and for every twenty-four hours of such absence the amount of six days pay, or at the option of the master, the amount of such expences as shall have been necessarily incurred in hiring a substitute; and in case any seaman while he shall belong to the ship shall without sufficient cause neglect or refuse to perform such his duty as shall be reasonably required of him by the master or other person in command of the ship, he shall be subject to a like forfeiture in respect of every such offence, and of every twenty-four hours continuance thereof; and in case any such seaman, after the ship's arrival at her port of delivery, and before her cargo shall be discharged, shall quit the ship, without a previous discharge or leave from the master, he shall forfeit one month's pay out of his wages: provided always, that no such forfeiture shall be incurred unless the fact of the seaman's absence, neglect, or refusal shall be duly entered in the ship's log book, the truth of which entry it shall be incumbent on the owner or master, in all cases of dispute, to substantiate by the evidence of the mate or some other credible witness.

VIII. And be it enacted, That in all cases where the seaman shall have contracted for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeitures to be incurred by seamen under this act shall be ascertained in manner following; (that is to say), if the whole time spent in the voyage agreed upon shall exceed one calendar month, the forfeiture of one month's pay expressed in this act shall be accounted

and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages or share as a calendar month shall bear to the whole time spent in the voyage; and in like manner a forfeiture of six days pay, or less, shall be accounted and taken to be a forfeiture of a sum bearing the same proportion to the whole wages or share as the six days or other period shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed the period for which the pay is to be forfeited the forfeiture shall be accounted and taken to be a forfeiture of the whole wages or share; and the master or owner is hereby authorized to deduct the amount of all forfeitures out of the wages or share of any seaman incurring the same.

IX. And be it enacted, That any seaman or other person who shall desert the ship to which he shall belong shall forfeit to the owner thereof all his clothes and effects which he may leave on board, and he shall also forfeit all wages and emoluments to which he might otherwise be entitled; and in case of any seaman deserting abroad he shall likewise forfeit all wages and emoluments whatever which shall be or become due or be agreed to be paid to him from or by the owner or master of any other ship in the service whereof such seaman may have engaged for the voyage back to the United Kingdom; and that all wages and portions of wages and emoluments which shall in any case whatever become forfeited for desertion shall be applied, in the first instance, in or towards the reimbursement of the expences occasioned by such desertion to the owner or master of the ship from which the seaman shall have deserted, and the remainder shall be paid to the Seamen's Hospital Society; and the master shall, in case of desertion in the United Kingdom, deliver up the register ticket of such seaman or other person to the collector or comptroller of the Customs at the port: Provided always, that every desertion be entered in the log book at the time, and certified by the signatures of the master and the mate, or the master and one other credible witness; and that the absence of a seaman from his ship for any time within twenty-four hours immediately preceding the sailing of the ship from any port, whether before the commencement or during the progress of any voyage, wilfully and knowingly, without permission, or the wilful absence of a seaman from his ship at or for any time without permission, and under circumstances showing an intention to abandon the same, and not return thereto, shall be deemed a desertion of and from the same ship; and in case any seaman shall desert in parts beyond the seas, and the master of the ship shall engage a substitute at a higher rate of wages than that stipulated in the agreement to be paid to the seaman so deserting, the owner or master of the ship shall be entitled to recover from the deserter, by summary proceeding, in the same manner as penalties are by this act made recoverable (so far as the same can be applied), any excess of wages or portion thereof which such owner or master shall pay to such substitute beyond the amount which would have been payable to the deserter in case he had duly performed his service pursuant to his agreement: provided always, that no seaman shall be imprisoned longer than three calendar months for non-payment of any such excess of wages.

Forfeiture for desertion.

X. And be it enacted, That if any person shall wilfully harbour or secrete any seaman or apprentice who shall have deserted from his ship, knowing or having reason to believe such seaman or apprentice to be a deserter, every person so offending shall for every such seaman or apprentice so harboured or secreted forfeit and pay the sum of ten pounds; and no debt exceeding in amount five shillings, incurred by any seaman after he shall have engaged to serve, shall be recoverable until the service agreed for shall have been concluded; nor shall it be lawful for any keeper of a public house, or of a lodging house for seamen, to detain any chest, tools, or other property of any seaman for any debt alleged to have been contracted by him; and in case of such detention of the chest, tools, or other property of a seaman, it shall be lawful for any justice of the peace at or near the place, upon complaint upon oath to be made by such seaman or on his behalf, to inquire into the matter upon oath in a summary way; and if it shall appear to such justice that the alleged claim is fraudulent, or that the debt was not fairly incurred to the full amount of the claim, by warrant under his hand and seal to cause such effects to be seized and delivered over to such seaman; and the person so detaining the same shall forfeit and pay a sum not exceeding ten pounds, at the discretion of such justice.

Penalty for harbouring deserters.

No debt exceeding 5s. recoverable from a seaman till voyage is ended.

Seaman's effects not to be detained under pretence of debt.

Penalty.

XI. And be it enacted, That the master or owner of every ship shall and is hereby required to pay to every seaman his wages within the respective periods following; (that is to say), if the ship shall be employed in coasting, the wages shall be paid within two days after the termination of the agreement, or at the time when any such seaman shall be discharged, whichever shall first happen; and

The period within which wages are to be paid.

if the ship shall be employed otherwise than coasting, then the wages shall be paid at the latest within three days after the cargo shall have been delivered, or within seven days after the seaman's discharge, whichever shall first happen; and in all cases the seaman shall, at the time of his discharge, be entitled to be paid, on account, a sum equal to one fourth part of the balance due to him; and in case the master or owner shall neglect or refuse to make payment in manner aforesaid, he shall for every such neglect or refusal forfeit and pay to the seaman the amount of two days pay (to be recovered as wages) for each day, not exceeding ten days, during which payment shall, without sufficient cause, be delayed beyond the respective periods aforesaid: provided always, that nothing in this clause contained shall extend to the cases of ships employed in the Southern Whale Fishery, or on voyages for which seamen, by the terms of their agreement, are wholly compensated by shares in the profits of the adventure.

Payment of wages or salvage to be deemed valid, notwithstanding bill of sale, &c.

Allowance for short provisions.

Masters to give seamen their certificates on their discharge.

Penalty for default.

For obtaining immediate payment of wages in certain cases.

Summary mode of recovering wages.

XII. And be it enacted and declared, That every such payment of wages to a seaman shall be valid and effectual in law, notwithstanding any bill of sale or assignment which may have been made of such wages, or of any attachment or incumbrance thereon, and that no assignment or sale of wages or salvage made prior to the accruing thereof, nor any power of attorney expressed to be irrevocable for the receipt of any such wages or salvage, shall be valid or binding upon the party making the same, and any attachment to be issued from any court whatever shall not prevent the payment of wages to any seaman; and if during the voyage the allowance of provisions which a seaman agreed to receive shall be reduced one third of the quantity or less he shall receive four pence per day, and if the reduction be more than one third he shall receive eight pence per day, during the period such respective deductions may be made, and such pecuniary allowance shall be paid to him in addition to and be recoverable as wages.

XIII. And be it enacted, That upon the discharge of a seaman from any ship, or upon payment of the wages to him, he shall receive from the master, and the master is hereby required to give to him, not only his register ticket, but also a certificate of such seaman's service and discharge, in the form set forth in schedule (E.) to this act annexed, specifying the period of his service, and the time and place of his discharge, which certificate shall be signed by the master, and if the master shall not give such certificate to such seaman he shall forfeit and pay to him the sum of five pounds.

XIV. And be it enacted, That if three days after the termination of the stipulated service, or if three days after a seaman shall have been discharged, he shall be desirous of proceeding on another voyage, and in order thereto, or for any other sufficient reason, shall require immediate payment of any amount of wages, not exceeding twenty pounds, due to him, it shall be lawful for any justice of the peace, in and for any part of her Majesty's dominions or the territories under the government of the East India Company, where or near to the port or place where such service shall have terminated, or such seaman shall have been discharged, or the party or parties liable shall be or reside, on application from such seaman, and on satisfactory proof that he would be prevented from employment or incur serious loss or inconvenience by delay, to summon such party or parties before him, and if it shall appear to the satisfaction of such justice that there is no reasonable cause for delay, to order payment to be made forthwith, and in default of immediate compliance with such order such party or parties shall forfeit and pay to such seaman, in addition to his wages, the sum of five pounds.

XV. And be it enacted, That in all cases of wages, not exceeding twenty pounds, which shall be due and payable to any seaman, it shall be lawful for any justice of the peace in and for any part of her Majesty's dominions or the territories under the government of the East India Company, where or near to the place where the ship shall have ended her voyage, cleared at the custom-house, or discharged her cargo, or where or near to the place where the party or either of the parties upon whom the claim is made shall be or reside, upon complaint on oath made to such justice by such seaman, or on his behalf, to summon such party or parties to appear before him to answer such complaint; and upon the appearance of such party or parties, or, in default thereof, on due proof of him or them having been so summoned, such justice is hereby empowered to examine the parties and their respective witnesses (if there be any) upon oath, touching the complaint, and the amount of wages due, and to inspect any agreement or copy thereof, if produced, and make such order for payment of the said wages, not exceeding twenty pounds, with the costs incurred by the seaman in prosecuting such claim, as shall to such justice appear reasonable and just; and in case such order shall not be obeyed within two days next after the making thereof it shall be lawful for such justice to issue his warrant to levy the amount of the wages awarded to be due, by distress and sale of the goods and chattels of the

party on whom such order for payment shall be made, rendering to such party the overplus (if any shall remain of the produce of the sale), after deducting thereout all the costs, charges, and expences incurred by the seaman in the making and prosecuting of the complaint, as well as the costs and charges of the distress and levy; or to cause the amount of the said wages, costs, charges, and expences to be levied on the ship in respect of the service on board which the wages are claimed, or on the tackle and apparel thereof; and if such ship shall not be within the jurisdiction of such justice, or such levy cannot be made, or shall prove insufficient, then he is hereby empowered to cause the party upon whom the order shall be made to be apprehended, and committed to the common gaol of the district or county, there to remain without bail until payment shall be made of the amount of the wages so awarded, and of all costs and expences attending the recovery thereof; and the award and decision of such justice as aforesaid shall be final and conclusive.

XVI. And be it enacted, That all the rights, liens, privileges, and remedies (save such remedies as are against a master himself) which by this act, or by any law, statute, custom, or usage, belong to any seaman or mariner, not being a master mariner, in respect to the recovery of his wages, shall, in the case of the bankruptcy or insolvency of the owner of the ship, also belong and be extended to masters of ships or master mariners, in respect to the recovery of wages due to them from the owner of any ship belonging to any of her Majesty's subjects; and that no suit or proceeding for the recovery of wages shall, unless they exceed twenty pounds, be instituted against the ship, or the master or owner thereof, either in any Court of Admiralty, or Vice-Admiralty Court, or any Court of Record in her Majesty's dominions, or the territories under the government of the East India Company, unless the owner of the ship shall be bankrupt or insolvent, or the ship shall be under arrest or sold by the authority of any Admiralty or Vice-Admiralty Court, or unless any magistrate acting under the authority of this act shall refer the case to be adjudged by any such Court or Courts, or unless neither the owner nor master shall be or reside at or near the port or place where the service shall have terminated, or where any seaman shall have been discharged or put on shore.

XVII. And be it enacted, That whenever any ship whatever, belonging to any subject of her Majesty, shall be sold, transferred, or disposed of at any port out of her Majesty's dominions, in all such cases (unless the crew in the presence of the British consul or vice consul, or in case of there not being any such consul or vice consul, then in the presence of one or more British resident merchants, not interested in the said ship, shall signify their consent in writing to complete the voyage if continued), or whenever the service of any seaman shall terminate at any place out of her Majesty's dominions, the master shall and he is hereby required to give to each of the crew and to each of the seamen whose service shall terminate as last aforesaid, a certificate of discharge in the said form set forth in schedule (E.), and also his register ticket, and, besides paying the wages to which they shall respectively be entitled, either to provide them with adequate employment on board some other British vessel homeward bound, or to furnish the means of sending them back to the port in her Majesty's dominions at which they were originally shipped, or to such other port in the United Kingdom as shall be agreed upon between him and them respectively, or to provide them with a passage home, or to deposit with the consul or vice consul, merchant or merchants as aforesaid, such a sum of money as shall be by them deemed sufficient to defray the expences of the subsistence and passage of such seamen; and if the master shall refuse or neglect so to do, such expences, when defrayed by such consul or vice consul, or any other person on behalf of the seamen, shall be a charge upon the owner of such ship, except in cases of barratry, and may be recovered against such owner as so much money paid to his use, together with full costs, at the suit of the consul or other person defraying such expences, or as a debt due to her Majesty, in case the same shall have been allowed to the consul out of the public monies, and if defrayed by the seaman shall be recoverable as wages due to him; and in all cases of wreck or loss of the ship every surviving seaman shall be entitled to his wages up to the period of the wreck or loss of the ship, whether such ship shall or shall not have previously earned freight; provided the seaman shall produce a certificate from the master or chief surviving officer of the ship, to the effect that he had exerted himself to the utmost to save the ship, cargo, and stores.

XVIII. And be it enacted, That every ship navigating between the United Kingdom and any place out of the same shall have and keep constantly on board a sufficient supply of medicines and medicaments suitable to accidents and dis-

Masters to have same remedies for wages as a seaman - or magistrates - *1837-1846*  
As to suits for recovery of wages.

When ship is sold at foreign port, the crew to be sent home at the expence of the master or owner, and ticket and certificate of discharge to be given.

Wages to be paid in case of wreck.

A supply of medicines, lime juice,

sugar, and vinegar, &c. to be kept on board, and seamen hurt in the service of the ship to be provided with advice, &c. gratis.

What ships to carry surgeons.

Maintenance of a General Register and Record Office of Seamen.

Register tickets to be procured.

eases arising on sea voyages, in accordance with the scale which shall from time to time or at any time be issued by the Lord High Admiral, or by the Commissioners for executing the office of Lord High Admiral, and published in the London Gazette; and every ship (except those bound to European ports or to ports in the Mediterranean Sea) shall also have on board a sufficient quantity of lime or lemon juice, sugar, and vinegar, the lime or lemon juice, sugar, and vinegar to be served out to the crew whenever they shall have been consuming salt provisions for ten days; the lime or lemon juice and sugar daily, after the rate of half an ounce each per day, and the vinegar weekly, at the rate of half a pint per week to each person, so long as the consumption of salt provisions be continued; and in case any default shall be made in providing and keeping such medicines, medicaments, and lime or lemon juice, sugar, and vinegar, the owner of the ship shall incur a penalty of twenty pounds for each and every default; and in case of default of serving out such lime or lemon juice, sugar, or vinegar as aforesaid, the master shall incur a penalty of five pounds for each and every default; and in case the master or any seaman shall receive any hurt or injury in the service of the ship, the expence of providing the necessary surgical and medical advice, with attendance and medicines, and for his subsistence until he shall have been cured, or shall have been brought back to some port of the United Kingdom, shall, together with the costs of his conveyance to the United Kingdom, be defrayed by the said owner of the ship without any deduction whatever on that account from the wages of such master or seaman; and, if paid by any officer or other person on behalf of her Majesty, the amount with full costs of suit, shall be recovered as a debt due to her Majesty; and every ship having one hundred persons or upwards on board, and every ship the voyage of which shall be deemed under the provisions of the act passed in the sixth year of the reign of her present Majesty, intituled "An Act for regulating the Carriage of Passengers in Merchant Vessels," to exceed twelve weeks, having fifty persons or upwards on board, shall have on board, as one of her complement, some person duly authorized by law to practise in this kingdom as a physician, surgeon, or apothecary; and in case of every default the owner shall incur a penalty not exceeding one hundred pounds.

XIX. And whereas in and by the said act passed in the sixth year of the reign of his late Majesty King William the Fourth it was provided, that as soon as conveniently might be after the passing of that act there should be established in the port of London an office to be called "The General Register Office of Merchant Seamen," which should consist of a registrar and such assistants and clerks, with such salaries and allowances as should be fixed and regulated from time to time by the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral of the United Kingdom for the time being; and that such office should be kept at the custom-house of the said port, and daily attendance be given thereat during the usual hours of business there; and that the said registrar, his assistants and clerks, should be under the control and directions of the said Lord High Admiral or the Commissioners for executing the office aforesaid for the time being: and whereas such office was established under and in pursuance of the said act, and it is expedient to maintain and continue the same under the title of "The General Register and Record Office of Seamen;" be it therefore enacted, that such office, salaries, and allowances, with every thing appertaining to the said office shall be maintained and continued in manner and form, and subject to such regulations, directions, and control, as the said Lord High Admiral or the Commissioners for executing the office of Lord High Admiral for the time being have directed or shall direct; and the said Lord High Admiral or the Commissioners for executing the office of Lord High Admiral for the time being shall have power to fix and regulate such fees as he or they may deem proper to be paid by the applicants for the inspection and copies of documents in the said office.

XX. And be it enacted, That every person, being a subject of her Majesty, intending to serve on board any ship subject to the provisions of this act (except as master or physician, surgeon or apothecary), shall and he is hereby required to provide himself with a register ticket, and for that purpose to apply personally at the General Register and Record Office of Seamen in London, or at the custom-houses of the several outports of the United Kingdom: and every applicant is hereby required to answer truly to the best of his ability, all the questions set forth in schedule (F.) to this act annexed, before he shall be entitled to receive his register ticket; and no person shall serve in any capacity on board any ship subject to any of the provisions of this act (except the master, physician, surgeon, or apothecary) who is not possessed of such register ticket; and the masters of

all apprentices who shall be bound after the commencement of this act, or whose apprenticeship shall be in force when this act takes effect, shall, before commencing a voyage, bring all indentures and assignments of apprenticeships, together with the apprentices themselves, to the registrar of seamen in London, or to the custom-house of the nearest port, in order that each of such apprentices may be furnished with a register ticket, which ticket shall be annexed and be kept annexed to the original indenture retained by the master, and shall be delivered up to the apprentice by the master at the expiration of the apprenticeship; and the registrar of seamen and the collectors and comptrollers of Customs respectively are hereby required to grant such tickets to all seamen and other persons requiring the same, and duly complying with the provisions aforesaid.

XXI. And be it enacted, That if any person shall alter or destroy a register ticket, or counterfeit, transfer, or traffic in, for gain or otherwise, or attempt to counterfeit, transfer, or traffic in, for gain or otherwise, any register ticket issued or purporting to be issued pursuant to the provisions of this act, he shall for every such offence be guilty of a misdemeanor; and any person becoming possessed of a register ticket, other than that legally issued to him, shall forthwith transmit the same to the registrar of seamen, and in case of default he shall for every such offence forfeit and pay a sum of twenty pounds.

XXII. And be it enacted, That if any seaman shall lose his register ticket he shall forthwith appear in person, and represent his case to the registrar of seamen in London, or the collector or comptroller of Customs at any of the outports; and he shall truly answer all reasonable questions put to him by the said registrar or officer of Customs; and if it appear that no fraud has been committed, and the loss was unavoidable, he shall be furnished with another register ticket; but if it appear that the seaman did not take due and reasonable care of his former ticket, or if he shall not give a satisfactory account of the same, he shall be liable to a penalty of not exceeding ten shillings and not less than two shillings, and shall not be entitled to any other ticket until such penalty shall be paid; and every person who shall apply for any ticket, and shall give a false answer to any reasonable question which may be put to him by the registrar of seamen, or his assistant, or by the collector or comptroller of Customs, with reference to the granting such ticket, shall be guilty of a misdemeanor.

XXIII. And be it enacted, That all district registrars of births, deaths, and marriages shall and they are hereby required to demand from the person registering the death of any seaman the register ticket of such seaman, and, if delivered to any such registrar, he shall forthwith forward the same to the registrar of seamen; and no person, other than the said registrar of seamen shall retain the ticket of a deceased seaman; and if any person shall retain any such ticket for more than twenty days after the death of any such seaman, or ten days after the arrival of the ship in the United Kingdom should the seaman die abroad, he shall be liable to a penalty of not exceeding five pounds in respect of every such register ticket so detained.

XXIV. And be it enacted, That a list shall be prepared from time to time by the registrar of seamen, setting forth the numbers of all the register tickets that have been cancelled by reason of the death of seamen or otherwise within the preceding six calendar months; and such lists shall be published half-yearly in the London Gazette, and shall also be transmitted by the said registrar from time to time to the collectors and comptrollers of Customs, to be by them conspicuously exhibited in the custom-houses and other stations of their respective ports, and copies of such lists shall be delivered to any master or owner on application; and every master or owner entering into an agreement with any seaman producing such cancelled ticket shall be liable to and incur a penalty of not exceeding five pounds; and every seaman tendering or delivering to a master a cancelled ticket, or any other ticket not legally issued to him, or falsely representing himself to be a foreigner, shall forfeit to the owner all wages which shall become due to him during the service, for which he shall agree or shall have agreed.

XXV. And be it enacted, That duplicates of all register tickets, and all papers and documents delivered or transmitted to and retained by the said registrar, shall be by him recorded, preserved, and kept; and every copy of such duplicate tickets, papers, and documents, or any of them, certified by the said registrar or his assistant to be a true copy, shall be admitted in evidence as fully as the original thereof; and every copy of a document and endorsement thereon, which may be delivered by any owner or master under the provisions of this act, shall and may be admitted in evidence against such owner and master, and each of them, as fully as the original of such document and endorsement.

Masters to bring indentures and apprentices to the registrar to obtain tickets.

Altering, &c. a register ticket, misdemeanor.

Penalty of 20*l*. if ticket be not transmitted.

When register ticket is lost.

Penalty.

False answer a misdemeanor.

Register tickets of parties dead.

List of cancelled tickets to be prepared by registrar, and published half-yearly, and copies given thereof on application.

Penalty for using cancelled ticket, &c.

Papers and documents to be recorded.

Certified copies to be evidence.

Masters of ships trading abroad to deliver lists of their crews on their departure and return.

XXVI. And be it enacted, That the master of every ship belonging to any subject of her Majesty, and bound to parts beyond the seas, except in the cases herein-after mentioned, shall, before he leaves his first port of departure from the United Kingdom, transmit or deliver, or cause to be transmitted or delivered, to the collector and comptroller of Customs at such port, a list, signed by himself, of the names of his crew (including apprentices), with the numbers of their register tickets, and the capacity in which they are serving on board, in the form set forth in schedule (G.) to this act annexed; and if any subsequent change in his crew take place before finally leaving the United Kingdom the owner or master shall, upon such change taking place, apprise the collector and comptroller of the Customs at the port where it occurs, by transmitting an amended list in the same form; and the master or owner of every such ship shall, within forty-eight hours after the arrival of such ship at her final port of destination in the United Kingdom, transmit or deliver, or cause to be transmitted or delivered, to the collector or comptroller of the Customs at such port, an account or list, signed by himself, of all the seamen and others (including apprentices) who shall have belonged to the ship at any time during her absence from the United Kingdom; which account or list shall contain a full, true, and correct return under their respective heads of the several particulars expressed in the form set forth in the schedule annexed to this act, and marked (C.), with Christian names and surnames of the master and all the crew at full length, and with the dates of the registry of the indentures of the apprentices, and the assignments respectively, and the port at which and the time when they were respectively registered, and also the numbers of the register tickets of every apprentice and seaman; and no vessel shall be cleared inwards by the tide surveyor or other officer until the master or owner shall produce a certificate from the collector or comptroller (which he is hereby required to give) to the effect that he has rendered such accounts or lists as aforesaid; and the tide waiters or other officers left on board shall be maintained at the expence of the master or owner until such accounts or lists shall be duly delivered as aforesaid.

Vessels not to be cleared inwards until list be rendered.

Masters of ships in the home and fishing trade to return lists half-yearly.

XXVII. And be it enacted, That within twenty-one days after the thirtieth day of June and the thirty-first day of December in each year the master or owner of every ship belonging to a subject of her Majesty, of whatever tonnage, employed in fishing on the coasts of the United Kingdom or elsewhere, other than in the South Sea, Greenland, and Newfoundland fisheries, or in proceeding from one part of the United Kingdom to another, and every ship proceeding or making voyages to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the Continent of Europe, between the river Elbe inclusive and Brest, shall deliver or transmit, or cause to be delivered or transmitted, to the collector or comptroller of the Customs of any port of the United Kingdom, an account, signed by such master or owner, of any voyage or voyages in which such ship shall have been engaged during the preceding half year, ending on the respective days above mentioned, and setting forth legibly and at full length the Christian and surnames of the several persons (including the master and apprentices) who shall have belonged to the ship at any time during such periods respectively; which account shall be in the form and shall contain a true and correct return under their respective heads of the several particulars expressed in the schedule marked (D.) to this act annexed, with the dates of the registry of the indentures of apprenticeship and assignments respectively, and the ports at which and the time when they were respectively registered, and the numbers of the register tickets of every seaman and apprentice; and no master or owner shall be entitled to or receive a transire or other Customs document necessary to enable him to conduct the business of his ship, after the expiration of the said twenty-one days, until he shall produce and show a certificate from such collector or comptroller (which he is hereby required to give), to the effect that he has delivered such an account; and in the case of ships of all descriptions which may be unemployed for six months, or which may be employed and not require a transire or other Customs document, the master or owner shall notify the same to such collector or comptroller within such twenty-one days, and in case of every default the master or owner shall be liable to a penalty of ten pounds; and all collectors and comptrollers of Customs of the ports to which the vessels belong shall transmit a list of all such ships, and of all ships of every description registered or licensed, or whose registers or licences have been transferred or cancelled in their respective ports within each half year ending as aforesaid, to the said registrar at the said office, on or before the first day of February and the first day of August in each year respectively.

Vessels not to receive transire until lists be delivered.

Owners of vessels unemployed, or not requiring Customs document, to notify same.

Penalty for default.



XXVIII. And be it enacted, That in case any ship belonging to any subject of her Majesty shall be lost, sold, or transferred, an account, containing a similar return as required in the several and respective cases before mentioned, made out up to the period of such loss, sale, or transfer, shall, if practicable, be delivered or transmitted by the master or owner at the time of the loss, sale, or transfer, to the collector or comptroller of the port to which the ship belongs, with all convenient speed, and in case such loss, sale, or transfer shall take place out of the United Kingdom, within twelve calendar months at furthest after the loss, sale, or transfer of the ship.

Return to be made in case of ship lost or sold abroad.

XXIX. And be it enacted, That all indentures, counterparts, assignments, lists, accounts, returns, papers, register tickets, and documents by this act required to be delivered to the collectors or comptrollers as aforesaid shall be by them transmitted to the said registrar for the purposes of this act at the end of every week, unless otherwise specified in this act; and every owner or master who shall refuse or neglect to transmit, deliver or cause to be delivered, any list, account, register ticket, or other document, as required by this act, shall for every such refusal or neglect forfeit and pay the sum of ten pounds.

Lists, &c. to be transmitted to the registrar.

Penalty on the owner or master for neglect.

XXX. And be it enacted, That all agreements, or copies thereof, lists, returns, register tickets, and other documents, which under the provisions of this act are required to be transmitted or delivered to the collectors or comptrollers of Customs of the several ports in the United Kingdom, shall, in the case of pleasure yachts, be transmitted or delivered by the masters or owners of such yachts direct to the registrar of seamen, and the owners or masters thereof shall be liable to the same penalties for default as herein provided in the cases of the masters or owners of other ships failing to transmit or deliver such documents to such collectors and comptrollers.

Lists, &c. in the case of pleasure yachts to be transmitted to the registrar.

XXXI. And be it enacted, That whenever any seaman, being abroad, shall die elsewhere than on board a ship belonging to any subject of her Majesty, leaving any money or effects not on board his ship, it shall be lawful for her Majesty's consul or vice-consul at or nearest to the place, and he is hereby required, to claim and take charge of all such money and effects, and to dispose of the said effects, if he shall so think fit, and after deducting all necessary and proper charges and expences incurred in the collecting thereof, or by or on account of such seaman, to remit the balance, with a full account of such money or effects, to the president and governors of the corporation "for the relief and support of sick, maimed, and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchant service," to be by such president and governors paid over and disposed of, in the same manner and under the same regulations as are provided by an act passed in the fifth year of his late Majesty King William the Fourth, intituled "An Act to amend an Act of the Twentieth Year of his Majesty King George the Second, for the Relief and Support of sick, maimed, and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned in the Merchant Service; and for other Purposes," with respect to the wages of seamen dying on board merchant ships; and in case any seaman dying abroad shall leave on board his ship any money, clothes, or other effects, or be entitled to any wages, the master of the said ship shall and he is hereby required to deposit the same, or the proceeds arising therefrom, with, and to pay such wages to, the president and governors aforesaid, to be by them disposed of in the same manner as is provided by the said act with respect to the wages of seamen dying on board ship, and to transmit to the said president and governors at the same time a full account of such effects and wages; and on failure the master shall forfeit a sum not exceeding fifty pounds, in addition to being accountable for such money, clothes, effects, and wages; and in all cases of a seaman dying abroad the master shall, on his ship's return to the United Kingdom, deliver up to the said president and governors the register ticket of such deceased seaman, and the said president and governors, on the receipt thereof, shall transmit the same to the registrar of seamen.

As to the disposal of the effects of any seaman dying abroad.

4 & 5 W. 4. c. 52.

XXXII. And be it enacted, That it shall be lawful for the overseers of the poor, or other persons having the authority of overseers of the poor, in and for any district, union, parish, township, or place in the United Kingdom, and they are hereby empowered, to bind by indenture, according to the form set forth in Schedule (H.) to this act annexed, and put out as an apprentice in the sea service to any of her Majesty's subjects, being the owner of any ship registered or licensed in any port of the United Kingdom, any boy having attained the age of twelve years, and of sufficient health and strength, who or whose parent or parents is or are chargeable to or maintained by any such district, union, parish, township, or place, or who shall beg for alms therein, with his consent, but not otherwise;

Parish boys may be put out apprentices to the sea service.

and until such boy shall attain the age of twenty-one years, or shall have served as apprentice seven years, or whichever shall first happen, such binding shall be effectual to all intents and purposes: Provided always, that where any such parish, township, or place separately maintaining its own poor shall be included in any union, or shall be under the management of a board of guardians, no such binding shall be valid unless the guardians of such union, parish, or other place respectively shall previously have given their consent thereto, by causing their official seal to be affixed to the indenture, and the same to be signed by the presiding chairman of the board at any meeting, and the clerk or person acting as such at such meeting; and provided also, that every such binding shall be made in the presence of any such boy, and of two justices of the peace, who shall execute the indenture in testimony of their being satisfied that such boy hath consented so to be bound, and attained the age, and is of sufficient health and strength as required by this act; and the age of every such boy shall be truly inserted in his indenture, and the age of every such boy so inserted therein shall (in relation to the continuance of his service) be taken to be his true age, without any further proof thereof; and any certificate of baptism of such boy which may be required shall be given and attested by the officiating minister without fee or reward: Provided always, that no apprenticeship to the sea service, whether parish or otherwise, shall be binding after the apprentice shall have attained the age of twenty-one years; and that every indenture, together with his register ticket annexed thereto, shall be given up to such apprentice on his attaining such age, or at the expiration of his apprenticeship, whichever shall first happen, by the person to whom he shall be bound at the time, under a penalty of twenty pounds, to be paid by such person on default; but should any apprenticeship, parish or otherwise, expire during a voyage, and before the ship's arrival at her final port of destination in the United Kingdom, such apprenticeship shall, notwithstanding, continue until the return of the ship to her final port of destination in the United Kingdom; but after one calendar month from the expiration of such apprenticeship the apprentice shall be paid the same wages as an able-bodied seaman or ordinary seaman of the said ship, according to his qualification.

XXXIII. And be it enacted, That it shall be lawful for any master or person to whom any parish apprentice shall have been or shall be hereafter bound to a service on shore, according to the statutes for the time being relating to such apprentices, or for the executors or administrators, or, there being none such, for the widow of any deceased master, with the concurrence of two or more justices of the peace in and for the county, district, or place where such boy shall have been bound apprentice, to assign such boy, with his consent, to be given in the presence of such justices, but not otherwise, as apprentice to any such owner as aforesaid, to be employed in the sea service during the period then remaining unexpired of his apprenticeship; and every such assignment shall be attested as next herein-after mentioned.

XXXIV. And be it enacted, That in the event of the bankruptcy, insolvency, or death of the master of any such parish apprentice to the sea service, it shall be lawful for such master, or the executors or administrators of such master, or, there being none such, for the widow of such deceased master, to assign the indenture of any such apprentice for the residue of the term then unexpired therein, to any other owner of any such ship: Provided always, that such assignment, if executed within the limits of the port of London, shall be attested by the said registrar, his assistant, or one of his clerks, and if executed at any other port, by the collector or comptroller of the Customs of such port.

XXXV. And be it enacted, That such overseers, guardians, or other persons as aforesaid shall cause the indenture of apprenticeship to be prepared and transmitted in triplicate; (that is to say,) two counterparts, besides the indenture, to the said registrar, if the owner of the ship to whom such apprentice is to be bound shall be or reside within the limits of the port of London, and if at any other port, to the collector or comptroller of the Customs at such port; and shall cause each such poor boy to be conducted and conveyed to such port or place by a constable or other trustworthy person, at the expence of the district, union, parish, township, or place; and when any such boy shall be so bound he shall be provided by the guardians of the said union or parish as aforesaid, or, in case the said parish or place shall not be included in any union or governed by a board of guardians, by the overseers, with a sufficient outfit of sea clothing, bedding, and similar necessities, to the value of five pounds, which said amount, together with the expences to be incurred in the binding and conveyance of the said boy, shall be charged by such guardians or overseers respectively to the account of the parish or other place by whose overseers the said boy shall be

No apprenticeship binding after apprentice shall have attained twenty-one.

Apprenticeships to continue until the return of the ship, and apprentice to be paid wages.

Parish apprentice may be turned over to the sea service.

Indentures may be assigned on the death of the master.

Parish officers to prepare indentures.

Constable to convey the apprentice. Guardians or overseers to provide clothing, &c.

bound, and be allowed to them in their account; and the said indentures so entered into by the overseers of any parish or other place as aforesaid may be sued upon in the name of the overseers of the poor of the said parish or other place for the time being, by their name of office; and no action commenced for the breach of any covenant therein contained, with the consent of the vestry of such parish or place, shall abate by reason of death or any change of overseers of such parish or place pending the same, but shall be proceeded in by the overseers for the time being, who shall be entitled to charge the whole amount of the costs incurred in such action, and not recovered from the defendant therein, upon the poor rates collected by them, though part of such costs shall have been incurred by their predecessors.

XXXVI. And be it enacted, That such indentures shall be executed in the presence of and attested by the constable or other person who shall conduct or convey such apprentice; and such indentures shall bear date respectively on the days on which they are executed; and such constable or other person shall transmit one of the said counterparts, duly executed, to the overseers, guardians, or other persons aforesaid, one to the master, and another to the said registrar.

XXXVII. And be it enacted, That the master or owner of every ship belonging to any subject of her Majesty, and of the burden of eighty tons and upwards (except pleasure yachts), shall have on board at the time of her proceeding from any port of the United Kingdom, and at all times when absent from the United Kingdom, or navigating the seas, one apprentice, or more, in the following proportion to the number of tons of his ship's admeasurement, according to the certificate of registry; (that is to say,) for every ship of eighty tons and under two hundred tons, one apprentice at the least; for every ship of two hundred tons and under four hundred tons, two apprentices at the least; for every ship of four hundred tons and under five hundred tons, three apprentices at the least; for every ship of five hundred tons and under seven hundred tons, four apprentices at the least; and every ship of seven hundred tons and upwards, five apprentices at the least; all of whom, at the period of their being bound respectively, shall be subjects of her Majesty, and above twelve and under seventeen years of age, and be duly bound for the term of four years at the least; and if any such master or owner shall neglect to have on board his ship the number of apprentices as hereby required, together with their respective registered indentures, assignments, and register tickets, he shall for every such offence forfeit and pay the sum of ten pounds in respect of each apprentice, indenture, assignment, or register ticket so wanting or deficient.

XXXVIII. And be it enacted, That in case any indentures of apprenticeship of any description shall be cancelled, or any apprentice, parish or otherwise, shall die on shore or desert, or by reason of the vessel of the master not having made a voyage for six months shall not be reported in either of the said lists, such cancellation, death, desertion, or non-employment shall forthwith be notified in writing by the master of the apprentice to the said registrar, if the ship on board which the apprentice was bound to serve shall belong to the port of London, or otherwise to the collector or comptroller of the port to which the said ship shall belong; and for every default the said master shall be liable to a penalty of ten pounds; and the collector or comptroller, if the notification be made to him, shall transmit the same to the said registrar within one week from the receipt thereof; and no cancelling of any indenture of apprenticeship of any description shall be valid or effectual without the mutual consent of the parties, or without the consent or in the absence of the registrar of seamen in London, or of the collector or comptroller of Customs of the port in which such cancellation shall take place, or, in case of bindings by the overseers, without the additional consent of the guardians of the union or parish whose consent was given to the said binding, to be testified by a copy of a minute of the board forwarded by the clerk to the said guardians.

XXXIX. And be it enacted, That the said registrar in London, and the collector and comptroller of the Customs at each other port, shall, in a book to be kept for that purpose, cause to be entered from time to time all such indentures and assignments of parish apprentices as aforesaid, specifying therein the dates thereof, the names and ages of the apprentices, the parishes or places from whence they are sent, the names and residences of their masters to whom they are bound or assigned, and the names, ports, and burden of the respective ships to which such masters belong, and shall make and subscribe on each indenture and assignment an endorsement, purporting that the same hath been duly registered pursuant to this act; and such registrar, collectors, and comptrollers respectively shall require the personal attendance of every such apprentice at the time of

How indentures to be attested.

Every ship, except pleasure yachts, to have apprentices according to her tonnage:

To be subjects of her Majesty: Their age and term of apprenticeship. Penalty for deficiency of apprentices, &c.

The cancelling of indentures and death or desertion of apprentices to be notified.

Penalty.

Consents necessary in cancelling indentures.

Indentures and assignments of parish apprentices to be registered.

Apprentices to appear personally when

indentures or assignments registered.

Indentures and assignments of other apprentices to be registered.

As to assignment of indentures of apprentices.

Assignments to be registered.

Apprentices exempted from contributions.

Documents exempted from duty.

Penalty on masters neglecting to register, &c. indentures,

and for suffering apprentices to quit their service.

Justices to determine complaints.

Common assaults may be summarily punished by two justices.

registering his indenture or assignment thereof; and every such collector and comptroller shall also, at the end of each week, transmit a list of the indentures and assignments and cancellations so registered by him within the week, containing all the particulars aforesaid, to the said registrar.

XL. And be it enacted, That in every case of a person (other than such parish apprentice as aforesaid) binding himself apprentice to the sea service the indentures to be executed on such occasion shall be in duplicate, in the form set forth in Schedule (I.) to this act annexed, and a counterpart shall be delivered to the said registrar, if the master shall be or reside within the port of London, or if at any other port, to the collector or comptroller of such port; and the indentures shall be registered in a book to be kept for that purpose by the said registrar, collectors, and comptrollers respectively, in which book shall be expressed the dates of the several indentures, the names and ages of the apprentices, the names and residence of their masters, and (if known) the names, port and burden of the several ships on board which they are respectively to serve; and such registrar, collectors, and comptrollers respectively shall require the personal appearance of every such apprentice at the time of registering his indenture or the assignment thereof, and shall endorse and subscribe upon each indenture a certificate purporting that the same hath been duly registered pursuant to this act; and the said collectors and comptrollers shall also at the end of each week transmit a list of the indentures and assignments registered by them within the week, containing all the particulars aforesaid, together with the said counterparts, to the said registrar, for the purposes of this act; and that it shall be lawful for the master of such apprentice, or in case of his death his executor or administrator, with the consent of the apprentice if of the age of seventeen years or upwards, and if under that age with the consent of his parent or guardian, to assign or transfer the indenture of any such apprentice to any other master or owner of any registered ship; and all such apprentices may during the term for which they shall be bound be employed in any ship of which the master for the time being of any such apprentice may be the master or owner: Provided always, that every such assignment shall be registered and endorsed by the said registrar, or by the collector or comptroller of the Customs at the port where the master shall be, or to which his ship shall belong; and the said collector or comptroller shall notify the same to the said registrar, and transmit an exact copy of the said endorsement to the said registrar.

XLI. And be it enacted, That no apprentice bound or assigned pursuant to this act, nor any master or owner in respect of such apprentice, shall be liable to any payment or contribution to or towards any hospital or institution; and that all agreements, attested copies, indentures, assignments, counterparts, and tickets, made, signed, or executed in compliance with or under the provisions of this act, shall be wholly exempt from stamp duty.

XLII. And be it enacted, That if any master or owner to whom any apprentice to the sea service shall be bound or assigned shall neglect to deliver a counterpart, and cause the indenture or the assignment (as the case may be) to be registered as required by this act, so far as depends on such master or owner, within ten days after the binding or assignment, every such master or owner shall for every such neglect forfeit and pay the sum of ten pounds; and if any such master or the master of any ship shall, after the ship shall have proceeded on the voyage upon which such ship may be bound, permit any apprentice to quit his service or the service of the ship, except for the purpose of entering into her Majesty's naval service, every such master shall for every such offence forfeit and pay the sum of twenty pounds.

XLIII. And be it enacted, That any justice of the peace residing at or near to any port to which any ship as aforesaid, having on board thereof any apprentice, shall at any time arrive, shall have full power and authority to inquire into and examine, hear and determine, all claims of apprentices upon their masters under their indentures, and all complaints of hard or ill usage exercised by their respective masters towards any such apprentices, or of misbehaviour on the part of any such apprentices, and to proceed thereupon as one or more justice or justices of the peace is or are empowered by law to do in other cases between masters and apprentices; and if the master of any ship shall not send on shore, in the charge of the mate or other trustworthy person, any apprentice desirous of complaining to a justice of the peace, so soon as the service of the ship will permit, he shall for every such default forfeit and pay the sum of ten pounds.

XLIV. And whereas by an act passed in the ninth year of the reign of his late Majesty King George the Fourth, for consolidating and amending the statutes in England relative to offences against the person, a summary jurisdiction is provided.

for the punishment of persons guilty of common assaults and batteries: And whereas it is expedient that the provisions of the last-mentioned act should extend to similar offences committed on board ships belonging to subjects of her Majesty; be it therefore enacted, That in the case of any assault or battery committed on board any ship belonging to any subject of her Majesty, in any part of the world, it shall be lawful for any two justices of the peace in any part of her Majesty's dominions, or the territories under the government of the East India Company, residing at or near any port or place at which the said ship may arrive or touch, upon complaint of the party aggrieved, to hear and determine any such complaint, and to proceed and make such adjudication thereon as by the said act any two justices are empowered to do in the cases of assaults and batteries in England; and the fine or forfeiture to be imposed in any such case shall be payable to the Seamen's Hospital Society: provided always, that such complaint shall be made and prosecuted within three months after such alleged assault or battery, or within three months after the arrival of the ship at her final port of destination in the United Kingdom, or within three months after the respective parties shall be within the jurisdiction of such justices as aforesaid.

XLV. And be it enacted, That no apprentice to the sea service shall be at liberty to enter into the naval service of her Majesty during the period of his apprenticeship without the consent of his master; but if, nevertheless, he shall voluntarily enter into such naval service of her Majesty, and shall be allowed by his master to continue therein, such master, in case he shall give notice to the secretary of the Admiralty of his consent to his apprentice remaining in her Majesty's said service during the residue of the term of his apprenticeship, shall, upon the production of the indenture and assignment (if any), if duly registered, and having the register ticket attached, be entitled to receive to his own use any balance of wages and prize money that may become due and payable to any such apprentice until the expiration of his apprenticeship.

Masters entitled to receive the wages, &c. of apprentices entering into the Navy.

XLVI. And whereas great mischiefs have arisen from masters of merchant ships leaving seamen in foreign parts, who have been thus reduced to distress, and thereby tempted to become pirates or otherwise misconduct themselves, and it is expedient to amend and enlarge the law in this behalf: be it therefore enacted, That if any master of a ship belonging to any subject of her Majesty shall discharge any person belonging to his ship or crew at any of her Majesty's colonies or plantations, without the previous sanction in writing (to be endorsed on the agreement) of the governor or other officer holding the chief authority there, or of the secretary or other officer duly appointed by the government there in that behalf, or in the absence of such functionaries then of the chief officer of Customs resident at or near such port or place, or shall discharge any such person at any other place abroad without the like previous sanction, to be so endorsed on the agreement by her Majesty's minister, consul, or vice-consul there, or in the absence of any such functionary then of two respectable merchants resident there, such master shall be guilty of a misdemeanor; or if any master of any such ship shall abandon or leave behind at any such colony or plantation any person belonging to his ship or crew, on the plea or pretence of unfitness or inability to proceed upon the voyage, or of desertion or disappearance from the ship, without a previous certificate in writing (to be endorsed on the agreement) of the governor, secretary, or other officer as aforesaid, or in the absence of such functionary then of the chief officer of Customs resident at or near such port or place, certifying such unfitness, inability, desertion, or disappearance, or shall abandon or leave behind any person belonging to his ship or crew at any other place abroad, on shore or at sea, upon such plea or pretence, without the like previous certificate of her Majesty's minister, consul, or vice-consul there, or in the absence of any such functionary then of two respectable merchants, if there be any such at or within a reasonable distance from the place where the ship shall then be, such master shall be guilty of a misdemeanor; or if any master of any such ship, in case any person belonging to his ship or crew shall desert from the said ship at any place abroad, shall neglect to notify the same in writing to one of such functionaries as aforesaid, if there be any such resident at or near the place, and in their absence, if it be out of her Majesty's dominions, then to two respectable merchants, if there be such at or near the place, within twenty-four hours of such desertion, such master shall be guilty of a misdemeanor; and the said functionaries are hereby authorized and required, and the said merchants are authorized, to examine into the grounds of such proposed discharge, or into the plea or pretence of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, upon oath (which oath they are hereby respectively authorized to administer), and to grant or refuse

No seaman to be discharged abroad, nor to be abandoned, or left behind, without sanction of consul, &c.

Forcing seamen on shore, &c. a misdemeanor.

Where misdemeanors may be prosecuted.

If any of the crew are left behind, the proof of sanction or authority to be upon the master.

Seamen, when allowed to be left behind, to be paid their wages.

Act not to extend to prevent seamen from entering into the Navy.

Upon entry of seamen into the Navy from any ships they shall be entitled to the immediate delivery up of their clothes, register tickets, and payment of any wages that may be due.

such sanction or certificate according to the circumstances, and as it shall appear to them to be just.

XLVII. And be it enacted, That if the master of any ship belonging to any of her Majesty's subjects, or the mate or other officer of such ship, shall wrongfully force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in or out of her Majesty's dominions, any person belonging to his ship or crew, before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom, such master, mate, or other officer shall be guilty of a misdemeanor; and every misdemeanor mentioned or created by this act shall and may be prosecuted by information at the suit of her Majesty's Attorney General, or by indictment or other legal proceeding in any Court having criminal jurisdiction in her Majesty's dominions at home or abroad; and the offence may be laid and charged in the said information, indictment, or other legal proceeding to have been committed in the county or place where the offender shall happen to be, who, being convicted thereof, shall be liable to fine or imprisonment, or both, as to the Court before whom he is tried shall seem meet; and every court is hereby authorized to issue a commission or commissions for the examination of any witness or witnesses who may be absent or out of the jurisdiction of the Court; and at the trial the depositions taken under such commission or commissions, if such witness or witnesses shall be then absent, shall be received in evidence.

XLVIII. And be it enacted, That if any master shall, contrary to the provisions of this act, discharge, abandon, or leave behind any seaman or other person belonging to the ship or crew, with or without his consent, it shall be incumbent on such master, in any information, indictment, or other proceeding against him, to produce or prove such sanction or respective certificate as aforesaid, or prove the impracticability of obtaining such certificate.

XLIX. And be it enacted, That every such master who shall leave any seaman or other person as aforesaid on shore at any such colony or plantation or place abroad, under a certificate of his not being in a condition to proceed on the voyage, shall deliver to one of the said functionaries, or if there be none such to any two respectable merchants there, or if there be but one then to such one merchant, a just and true account of the wages due to such person, and pay the same either in money or by a bill drawn upon the owner; and if by bill, then such functionaries or merchants are respectively authorized and required, by endorsement on such bill, to certify that the same is drawn for money due on account of seamen's wages, or to that effect; and any master who shall refuse or neglect to deliver a just and true account of such wages, or to pay the amount thereof in money or by bill as aforesaid, shall for every such offence or default forfeit and pay the sum of ten pounds, and every master who shall deliver a false account of such wages shall for every such offence forfeit and pay the sum of twenty pounds.

L. Provided always, and be it enacted, That nothing in this act or in any agreement contained shall prevent any seaman or person belonging to any ship or vessel whatever from entering or being received into the naval service of her Majesty, nor shall any such entry be deemed a desertion from the ship or vessel, nor shall such seaman or other person thereby incur any penalty or forfeiture whatever, either of wages, clothes, or effects, or other matter or thing; and no master or owner shall insert or introduce, or permit to be inserted or introduced, into any articles or agreement, any clause, engagement, or stipulation whereby any seaman or other person shall or may incur any forfeiture or be exposed to loss in case he shall enter into her Majesty's naval service; and if inserted, the clause, engagement, or stipulation shall be void, and the offender shall thereby incur a penalty of twenty pounds.

LI. And be it enacted, That when any seaman shall quit any such ship or vessel as aforesaid, in order to enter into her Majesty's naval service, and shall thereupon be actually received into such service, not having previously committed any act amounting to and treated by the master as desertion, he shall be entitled immediately upon such entry to have his register ticket and all his clothes and effects on board such ship or vessel delivered to him, and to receive from the master the proportionate amount of his wages up to the period of such entry, to be paid either in money or by a bill on the owner; all which register ticket, clothes, effects, money, or bill such master is hereby required to deliver and pay to him accordingly, under a penalty of twenty pounds for any refusal or neglect, to be recovered with full costs of suit by such seaman; but in case the master shall have no means of ascertaining the balance, he shall make out and deliver to such seaman a certificate of the period of his service, and the rate of wages he is

entitled to, producing at the same time to the commanding or other officer of her Majesty's vessel the agreement with the seaman; and every such master, upon the delivery of such register ticket, clothes, and effects, and the settlement of such wages in manner herein mentioned, shall receive from the officer in command of the vessel into which the seaman shall have entered a certificate of such entry, endorsed on the agreement, and signed by the said officer, which such officer is hereby required to give.

LII. And be it enacted, That if any person shall be discharged, or wilfully and wrongfully left behind or abandoned, at any place beyond seas, in or out of her Majesty's dominions, by any master, mate, or other officer, contrary to the provisions of this act, and shall become distressed, and be relieved under the provisions of an act passed in the eleventh year of the reign of his late Majesty King George the Fourth, for amending and consolidating the laws relating to the pay of the Royal Navy, or any act hereafter to be passed for that purpose, or if any person shall, as principal or agent, engage any subject of her Majesty to serve in any vessel belonging to any foreign power, or to the subject of any foreign state, and such last-mentioned person shall become distressed and be relieved as aforesaid, then, in addition to the wages due from such master or owner or person making such engagement, and the penalties to which such master may be liable, her Majesty shall be entitled to sue such master or the owner of the ship, or any person who shall have made such engagement as aforesaid, at the discretion of the Commissioners for executing the office of Lord High Admiral of the United Kingdom, for all the charges and expences which shall have been incurred in or for the subsistence, necessary clothing, and conveyance home or burial (should he die abroad or before reaching home) of any such seaman or person relieved as aforesaid, as money paid to the use of such master or owner or other person, who shall have made such engagement as aforesaid, and recover the same, together with full costs of the suit, in the same manner as other debts due to her Majesty are recoverable; and in any proceeding for that purpose proof of the account furnished to the said Commissioners by any such functionaries, or by such two merchants, or one merchant, according to the case, as provided by the said act of the eleventh year of King George the Fourth, shall, together with the proof of payment by the said Commissioners, or by the paymaster general, of the charges incurred on account of any such person, be sufficient evidence that such person was relieved and conveyed home or buried at her Majesty's expence; and the Court in which any proceeding for the recovery of the said money shall be instituted is hereby authorized to issue a commission or commissions for the examination of witnesses, and the depositions taken under such commission or commissions shall be used as evidence.

LIII. And be it enacted, That if any ship belonging to a subject of her Majesty (except packets for passengers in the course of their voyage) shall arrive at any foreign port where there shall be a British consul or vice-consul, or at any port in a British colony, and remain thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver or cause to be delivered to such consul or vice-consul at such foreign port, or to the collector or comptroller of the Customs at such port of a British colony, the agreement or agreements before mentioned, together with an account at the foot of such agreement of all apprentices on board, setting forth their christian and surnames at full length, the dates of the registry of their indentures and assignments respectively, and the ports at which and the time when they were registered, and also all indentures and assignments of apprenticeships, and the register tickets of all the crew who shall be subjects of her Majesty, the whole to be kept by such consul or vice-consul, collector or comptroller, as the case may be, during the ship's stay in such port, and (excepting the register tickets of deserters, which are to be transmitted by such functionaries to the registrar of seamen,) to be returned to the master a reasonable time before his departure, with a certificate endorsed on such agreements respectively, stating when the same were respectively delivered and returned, without any fee or charge being made for the same; and in case it shall appear that the required number of apprentices are not on board, or that the required forms or existing laws have been in any respect neglected or transgressed, such consul or vice-consul, collector or comptroller, shall make an endorsement to that effect on such agreement, and forthwith transmit a copy of such endorsement, with the fullest information he can collect regarding such neglect or transgression, to the said registrar; and if any master shall neglect to deliver any agreement, indenture, assignment or register ticket, or such account as aforesaid, he shall for every such neglect or default forfeit and pay the sum of

Power for her Majesty to sue for the amount advanced for the relief of seamen left abroad.

Ship's agreement, indentures, and assignments of apprenticeship, and register tickets, on arrival at a foreign port, to be deposited with the consul, and at a colony with the officers of Customs.

Consuls to make endorsements on agreements.

Penalty on masters for neglect, &c.

No seaman to be shipped at a foreign port without the sanction of the consul.

Masters to produce agreement, &c. to the officers of Queen's ships.

Penalty.

Consuls, registrar, and officers of Customs empowered to require production of the agreement, muster roll, &c.

Penalty on master refusing to produce.

Survey of provisions, &c.

If provisions are found insufficient, &c.

As to offences committed at foreign ports.

twenty pounds; or if any master shall deliver any false or incorrect account, he shall for every such offence forfeit and pay the sum of thirty pounds.

LIV. And be it enacted, That no seaman shall be shipped at any such foreign port by any such master, except with the sanction of such consul or vice-consul, to be endorsed or certified on the agreement, under a penalty of twenty pounds, to be forfeited by the master for every seaman so shipped.

LV. And be it enacted, That the master of every ship belonging to any subject of her Majesty shall and he is hereby required to produce and show the log book, muster roll of the ship, and the agreement or agreements with his crew, their register tickets, and the indentures of his apprentices, and the assignments thereof, and a list of all the passengers and persons on board, to the captain, commander, or other commissioned officer of any of her Majesty's ships or vessels requiring the production and sight thereof; and that it shall be lawful for any such officer in her Majesty's naval service to muster the crew (including apprentices) of any ship belonging to any such subject, in order to be satisfied that the provisions of this act, and every other act by which the crews of such ships as aforesaid are regulated, and the laws relating to navigation, have been duly kept and complied with; and if any master shall, upon being required so to do by any such officer, neglect or refuse to produce such log book, muster roll, or agreement, register tickets, indentures, and assignments, and lists of passengers and persons, or any of them, or shall obstruct any officer in the execution of his duty in mustering the said crew, or shall produce any false log book, muster roll, or list, he shall for every such offence forfeit and pay the sum of twenty pounds.

LVI. And be it enacted, That for the better carrying into effect the purposes of this act it shall be lawful for her Majesty's consuls and vice-consuls in foreign ports, and for the said registrar and his assistant, and also for the respective chief officers of the Customs at the several ports of the United Kingdom and of the British possessions abroad, to demand from the master of every ship belonging to a subject of her Majesty the production of the log book, muster roll of the ship, and such agreements, register tickets, indentures, and assignments as aforesaid, and a list of passengers and persons on board, and to muster the crew (including apprentices) of such ship, and to summon the master to appear before them, and give any explanation they may respectively require regarding the said crew, ship, or documents, for the purpose of ascertaining whether the provisions of this act, and every other act by which the crews of such ships as aforesaid are regulated, and the laws relating to navigation, have been kept and complied with, and to take copies of all or any of such documents; and if any such master, on such demand being made, shall refuse to produce such log book, muster roll, agreements, register tickets, indentures, and assignments, and list of passengers and persons, or refuse to allow copies to be taken, or shall refuse to permit his crew to be so mustered, or shall refuse to appear and give such explanation as aforesaid, or shall wilfully deceive or mislead the person before whom he shall so appear, he shall for every such neglect, refusal, or offence forfeit and pay the sum of twenty pounds.

LVII. And be it enacted, That it shall and may be lawful for any consul or vice-consul of her Majesty, and for any collector or comptroller of the Customs, upon complaint made by any three or more of the crew, to survey and examine, or cause to be surveyed and examined, the provisions, water, and medicines put or supplied on board any ship for the use and consumption of the crew; and if on such survey and examination it shall be found that such provisions, water, or medicines are of a bad quality, or unfit for use, or not appropriate, or there shall not appear to be a sufficient quantity thereof, the surveying officer shall signify the same in writing to the master of the ship; and if such master shall not thereupon provide other fit and proper provisions, water, or medicines in lieu of any which may be signified by the said surveying officer to be of a bad quality, or unfit for use, or not appropriate, or if any such master shall not thereupon procure the requisite quantity of provisions, water, and medicines, or shall use any provisions, water, or medicines which shall have been signified by the surveying officer to be of a bad quality, or unfit for use, or not appropriate, he shall in each and every of such cases be guilty of a misdemeanor.

LVIII. And be it enacted, That all offences against the property or person of any subject of her Majesty, or of any foreigner, which shall be committed in or at any port or place, either ashore or afloat, out of the dominions of her Majesty, by the master and crew (including apprentices), or any or either of them, belonging to any ship subject to any of the provisions of this act, or who within three months before the committal of the offence shall have been the master thereof,



or shall have formed part of any such crew, shall be and they are hereby declared to be offences of the same nature respectively, and to be liable to the same punishments respectively, as if they had been committed on the high seas and other places within the jurisdiction of the Admiralty of England, and shall be inquired of, heard, tried, and determined and adjudged in the same manner as if such offences had been committed within such jurisdiction; and when any trial for such offences, or for any misdemeanor against the provisions of this act, shall take place before any justices or judges of oyer and terminer and gaol delivery, it shall be lawful for the Court to order and direct the payment of the costs and expences of the prosecution, as in the case of costs and expences of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

LIX. And be it enacted, That whenever any complaint shall be made to any of her Majesty's consuls or vice-consuls of any such offence or of any offence having been committed at sea by the master and crew (including apprentices), or any or either of them, belonging to any ship subject to any of the provisions of this act, it shall be lawful for any such consul or vice-consul to inquire into the case, upon oath, and at his discretion to cause any offender to be placed under all necessary restraint, so far as it may be in his power, so that he may be sent, and conveyed in safe custody to England as soon as practicable, in any vessel of her Majesty, or of any of her subjects, to be there proceeded against according to law; and the costs and charges of imprisoning any such offender, and of conveying him and the witnesses to England, if not conveyed in the ship to which they respectively belong, shall be considered and deemed as part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of the United Kingdom left in distress in foreign parts; and all depositions taken before any consul or vice-consul abroad, and certified under his official seal to be the depositions, and that they were taken in the presence of the party accused, shall be admitted in evidence in all courts having criminal jurisdiction, and otherwise, in like manner as depositions taken before any justice of the peace in England now are or may be; and the register ticket of every offender shall be delivered up to her Majesty's consul or vice-consul, as the case may be, and be transmitted by him to the registrar of seamen.

For the safe custody and conveyance of offenders to England.

LX. And be it enacted, That it shall be lawful for any consul or vice-consul to order a passage to England for any such offender or offenders under necessary restraint, and also for the witnesses; and the master or other person having the charge of any ship or vessel belonging to any subject of her Majesty bound for England shall and he is hereby required to receive and afford a passage and subsistence during the voyage to any such offender or offenders and witnesses, not exceeding the rate of one offender or two witnesses for every one hundred tons of the ship's burden; and on his ship's arrival in England the master of any vessel belonging to a subject of her Majesty shall take or cause to be taken the offender or offenders before a justice of the peace, who shall deal with the matter as in cases of offences committed upon the high seas; and in case the master or other person having the charge of any ship or vessel belonging to any subject of her Majesty, when required by the consul or vice-consul to receive and afford a passage to any offender or witness, shall not receive and afford such passage, or shall not take or cause to be taken the offender or offenders before a justice of the peace as aforesaid, every such master shall be liable to a penalty of fifty pounds; and the seaman, if acquitted, shall receive his register ticket again upon due application to the registrar of seamen.

As to the conveyance of offenders and witnesses to England.

LXI. And be it enacted, That this act shall not extend or apply to any ship registered in or belonging to any British colony having a legislative assembly, or to the crew of any such ship, while such ship shall be within the precincts of such colony; but every ship belonging to any colony or possession of her Majesty when proceeding from one part of the United Kingdom to another, or from the United Kingdom to the islands of Jersey, Guernsey, Alderney, Sark, or Man, or from any port in the United Kingdom to any port or possession of any foreign power or country, or to any colony to which the ship shall not belong, shall be held to come within the provisions of this act; and this act is hereby extended to the same; and the owner, master, and crew, including apprentices, of such ship so trading as aforesaid, shall be and are hereby declared liable to the provisions of this act as fully as the owner, master, and crew of any British registered ship; and this act and the provisions thereof (except so far as the same relate to agreements, register tickets, and having apprentices,) shall also extend and apply to ships belonging to all of her Majesty's colonies and possessions abroad, wherever otherwise proceeding or trading, and to the owners, masters,

As to ships belonging to British colonies.

Recovery of  
Penalties.

Application of  
forfeitures.

Definition of  
the terms  
"master,"  
"seaman,"  
"ship," and  
"owner."

As to relief to  
persons from  
Asia and Africa  
becoming dis-  
tressed in the  
United King-  
dom.

and crews of such ships, when any such ship shall be beyond the precincts of the colony or possession to which she shall belong; and all certificates and sanctions required by this act to be endorsed on agreements shall, in the case of ships last referred to, be otherwise given in writing where no written agreement exists.

LXII. And be it enacted, That all penalties and forfeitures imposed by this act, and for the recovery whereof no specific mode is herein-before provided, shall and may be recovered, with costs, either in any of her Majesty's Courts of record at Westminster, Edinburgh, or Dublin, or in the colonies or territories under the government of the East India Company, at the suit of her Majesty's law officers respectively, or at the suit of any person, by information and summary proceeding before any justice or justices of the peace in and for any part of her Majesty's dominions, or the territories under the government of the East India Company, where or near to the place where the offence shall be committed or the offender shall be; and if proceedings for the recovery of any forfeiture or penalty imposed by this act, or for the recovery of any debt due to her Majesty, be commenced in any of her Majesty's Courts, the Court in which such proceeding shall be instituted is hereby authorized to issue a commission or commissions in or out of her Majesty's dominions for the examination of witnesses, and the depositions taken thereunder shall be used and admitted in evidence; and in case of a summary conviction under this act, and the sum imposed as a penalty by the justice or justices shall not be paid, either immediately after the conviction or within such period as the justice or justices shall at the time of the conviction appoint, it shall be lawful for the convicting justice or justices to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice or justices, for any term not exceeding six calendar months, the commitment to be determinable upon payment of the amount and costs; and all penalties and forfeitures mentioned in this act, for which no specific application is herein-before provided, shall, when recovered, be paid and applied in manner following; (that is to say,) so much thereof as the Court or the convicting justice or justices shall determine, but not exceeding one moiety, shall be paid to the informer or person upon whose discovery or information the same shall be recovered, and the residue shall be paid to the Seamen's Hospital Society: Provided always, that it shall be lawful for the Court before which, or the justice or justices before whom, any proceedings shall be instituted for the recovery of any pecuniary penalty imposed by this act, to mitigate or reduce such penalty as to such Court or justices respectively shall appear just and reasonable; but no such penalty shall be reduced to less than one third of its original amount; and it shall be lawful, in the discretion of the said Court, or of the said justice or justices hearing the complaint, to order such costs against the informing or complaining party failing to prove the charge as the said Court or justice or justices may deem fit, and such costs shall be recoverable in the same manner as penalties under this act, and be paid as such Court or justice or justices shall direct: Provided also, that all proceedings so to be instituted shall be commenced within two years next after the commission of the offence, if the same shall have been committed at or beyond the Cape of Good Hope or Cape Horn, or within one year if committed elsewhere, or within two calendar months after the return of the offender and the complaining party to the United Kingdom.

LXIII. And to avoid doubts in the construction of this act, be it enacted, That every person having the charge or command of any ship belonging to any subject of her Majesty shall, within the meaning and for the purposes of this act, be deemed and taken to be the master of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a seaman, within the meaning and for the purposes of this act; and that the term "ship" shall be taken and understood to comprehend every description of vessel navigating on any sea or channel, or waters outside the mouths of rivers, and also every vessel passing beyond the precincts of a port; and that the term "owner" shall be taken and understood to comprehend all the several persons, if more than one, to whom the ship shall belong.

LXIV. And be it enacted, That if any person, being a Malay, Lascar, or native of the territories under the government of the East India Company, or if any Asiatic or African seaman, having been brought to the United Kingdom on board any ship, shall be found or be in the United Kingdom in distress for want of food, clothing, or other necessities, it shall and may be lawful for the commissioners for executing the office of Lord High Admiral of the United Kingdom, at their discretion, to supply necessary and reasonable relief to every such person

and seaman, and to maintain him until he shall be sent on board some ship for the purpose of being conveyed to or near to the port from which he was shipped, and also to pay, defray, and advance the money necessary to procure every such person and seaman a proper and sufficient passage to such port; and all such sum or sums of money as shall be paid and advanced by or by order of the said commissioners for or on account of such relief, maintenance, and passage shall be and become a debt due to her Majesty, and be recoverable as such, with full costs of suit, in the Courts of law either in her Majesty's dominions or in the territories under the government of the East India Company, from the owner and master, or either of them, of the ship on board whereof such person or seaman shall have been brought from Asia or Africa; but nothing herein contained shall repeal or annul any other act or acts now in force for the relief and conveyance home of any Asiatic or African person or seaman.



SCHEDULE (B.)

An Agreement made pursuant to the directions of an act of parliament passed in the year of the reign of between the master of the ship of the burden of and of the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the said several capacities against their respective names expressed, which ship is to be employed in [here the nature of the ship's employment is to be described, whether in the fisheries, on the coast, or in proceeding from one part of the United Kingdom to another, or to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any part of the Continent of Europe between the river Elbe inclusive and Brest]; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent to their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ship, in boats, or on shore [here may be inserted any other clauses which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to or inconsistent with the provisions and spirit of this act]; in consideration of which services, to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise to pay to the said crew, by way of compensation or wages, the amount against their names respectively expressed: provided always, and it is hereby declared, that no seaman shall be entitled to his discharge from the ship during any voyage in which she may be engaged, nor at any other port than a port in the United Kingdom: And it is hereby agreed, that any embezzlement, or wilful or negligent loss or destruction, of any part of the ship's cargo or stores, shall be made good to the owner out of the wages (so far as they will extend) of the seaman guilty of the same; and if any seaman shall have entered himself as qualified for a duty to which he shall prove to be not competent, he shall be subject to a reduction of the rate of wages hereby agreed for, in proportion to his incompetency. In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

| No. and Date of Ship's Register. | Place and Time of Entry. |        |       | Men's Names. Christian and Surnames set forth at full Length. | Age. | Town or County where born. | Amount of Wages per Calendar Month, Share, or Voyage. | Quantity of Provisions per Day. | Witness to Signature. | Name of Ship in which the Seaman last served. | Number of Register Ticket. |
|----------------------------------|--------------------------|--------|-------|---|------|----------------------------|---|---------------------------------|-----------------------|---|----------------------------|
|                                  | Day.                     | Month. | Year. |   |      |                            |   |                                 |                       |   |                            |
|                                  |                          |        |       |   |      |                            |   |                                 |                       |   |                            |

I hereby declare to the truth of all the particulars set forth in this agreement [or attested copy of agreement] delivered to the collector or comptroller of the port of , this day of , 18 .  
Master.  
Mate.

Note. — This agreement, or an attested copy thereof, is required to be delivered to the collector or comptroller of Customs of any port of the United Kingdom, within thirty days after the 30th of June and the 31st of December in each year.

SCHEDULE (C.)

Ship of the port of of the burden of tons, whereof was master.

A List of the crew (including the master and apprentices) at the period of quitting the port of in the United Kingdom, from which she took her first departure on her voyage to on the day of and of the men who joined the ship subsequent to such departure, and until her return to the port of being her first final port of destination in the United Kingdom on the day of 184 .

| No. and Date of Ship's Register. | Name. Christian and Surname at full Length. | Age. | Town or County where born. | Quality. | Ship in which he last served. | Date of joining the Ship. | Place where. | Time of Death or leaving the Ship. | Place where. | How disposed of. | Date of Apprentices' Indentures and Assignments. | When and where registered. | Numbers of Register Tickets. |
|----------------------------------|---|------|----------------------------|----------|-------------------------------|---------------------------|--------------|------------------------------------|--------------|------------------|--|----------------------------|------------------------------|
|                                  |   |      |                            |          |                               |                           |              |                                    |              |                  |  |                            |                              |

Note.—If any one of the crew has entered her Majesty's service, the name of the Queen's ship in which he entered must be stated in the account, under the head of "How disposed of."

Note.—This list to be filled up and signed by the master of every vessel, of whatever tonnage, and to be delivered by him to the collector or comptroller of the Customs within twenty-four hours after the ship's arrival at her final port of destination in the United Kingdom.

SCHEDULE (D.)

AN ACCOUNT of the voyages in which the ship \_\_\_\_\_ of \_\_\_\_\_ tons has been engaged, in the half year commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and of all the persons (master and apprentices included) who have belonged to such ship during that period.

ACCOUNT OF THE VOYAGES.

[Here the several Voyages, and the Periods of such Voyages, are to be described.]

ACCOUNT OF THE CREW.

| No. and Date of Ship's Register. | Name, Christian and Surname at full Length. | Age. | Town or County where born. | Quality. | Ship in which he last served. | Date of joining the Ship. | Place where. | Time of Death or leaving the Ship. | Place where. | How disposed of. | Date of Apprentices' Indentures and Assignments. | When and where registered. | Numbers of Register Tickets. |
|----------------------------------|---|------|----------------------------|----------|-------------------------------|---------------------------|--------------|------------------------------------|--------------|------------------|--|----------------------------|------------------------------|
|                                  |   |      |                            |          |                               |                           |              |                                    |              |                  |  |                            |                              |

Note.—If any one of the crew shall have entered her Majesty's service, the name of the Queen's ship in which he entered must be stated in this account, under the head of "How disposed of."

Note.—This account, when filled up, is to be signed by the owner or master of every ship, of whatever tonnage, and deposited with the collector or comptroller of the Customs of any port of the United Kingdom within twenty-one days after the thirtieth of June and the thirty-first of December in every year.





acting in and for the said division in which the said [parish or union] is situate, do by this indenture, duly executed by the said justices in testimony of their having been satisfied that the boy hereby and hereafter bound and named hath attained the age herein-after mentioned, and is of sufficient health and strength as required by the statute in such case made and provided, bind, put out, and place, with his own free will and consent, and not otherwise, a poor boy of the said [parish or union], aged \_\_\_\_\_ years, as appears by the copy of the entry of his baptism in the register book of the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ hereunto annexed \* who is now [and whose] parents \_\_\_\_\_ and \_\_\_\_\_ ] are now chargeable to and maintained by the said [parish] of \_\_\_\_\_ apprentice in the sea service to one of her Majesty's subjects of the [parish] of \_\_\_\_\_ in the county of \_\_\_\_\_ being the master† of the ship called \_\_\_\_\_ registered in the port of \_\_\_\_\_ being a port of the United Kingdom of Great Britain and Ireland, with him the said \_\_\_\_\_ his executors and administrators, and the assign or assigns of the widow or of the executors and administrators of the said \_\_\_\_\_ to dwell, remain, and serve from the day of the date of these presents for so long time and until the said apprentice shall attain the age of twenty-one years; during all which term the said apprentice, his said master, his executors and administrators, or the assign or assigns of the widow or of the executors or administrators of the said \_\_\_\_\_ shall well and faithfully serve; his and their secrets keep; his and their lawful commands everywhere gladly do and execute; hurt or damage to his said master, his executors or administrators, or the said assign or assigns, he shall not do, consent or see to be done by others, but to the utmost of his power shall hinder the same, and forthwith his said master, his executors or administrators, or the said assign or assigns thereof warn; taverns or alehouses he shall not frequent; at dice, cards, tables, bowls, or any other unlawful games he shall not play; the goods of his said master, his executors or administrators, or the said assign or assigns, he shall not embezzle or waste, or lend or give to any person or persons without his or their licence; nor from the service of his said master, his executors or administrators, or the said assign or assigns, without his or their consent, at any time absent himself; but as a true and faithful apprentice in all lawful businesses, according to his power, wit, and ability, and honestly, orderly, and obediently in all things, shall demean and behave himself towards his said master, his executors or administrators, or the said assign or assigns, during the said term; and true and just accounts of his or their goods, chattels, and money committed to his charge, or which shall come to his hands, faithfully he shall give at all times, when thereunto required by him or them; and shall also render an account of, and well and truly pay or cause to be paid to him or them, all such wages, prize money, and other sum or sums of money as shall become due and payable unto him the said apprentice from her Majesty, her heirs, successors, or any other person, in case he shall enter or go into her Majesty's service during the said term. In consideration whereof, and of the sum of \_\_\_\_\_ of lawful money of the United Kingdom of Great Britain and Ireland to him in hand well and truly paid at the execution of these presents (the receipt whereof the said \_\_\_\_\_ doth hereby acknowledge), he the said \_\_\_\_\_ for himself, his executors or administrators, doth hereby covenant, promise, and agree to and with the said overseers of the poor, and their successors, that he the said \_\_\_\_\_ his executors or administrators, and the assign or assigns of his widow or of his executors or administrators, the said apprentice in the art, trade, or business of a mariner or seaman, with the circumstances thereunto belonging, shall and will, until he shall attain the age of twenty-one years, teach, learn, and instruct, or cause to be taught, learned, and instructed, in the best way and manner that he or they can; and shall and will find, provide, and allow unto the said apprentice competent and sufficient meat and drink, apparel, lodging, washing, medicine, medical and surgical aid and advice, and all other things necessary and fit for an apprentice.

And also shall and will so provide for the said apprentice that he be not any way a charge to the said [parish or union] of \_\_\_\_\_ or parishioners thereof;

\* The copy must be given and attested by the officiating minister, without fee or reward. If it cannot be found, erase the words from "by the," to "annexed," and insert "from such information of such boy's age as the said justices have been able to obtain, as the entry of his baptism cannot be found." The apprentice must be above twelve and under seventeen years of age, and bound for four years at the least.

† Or owner.

but of and from all charge shall and will save the [parish or union] of and parishioners thereof harmless and indemnified during the said term. In witness whereof the said justices, and other parties above-said to the present indenture, interchangeably have set their hands and seals the day and year first above written.

Signed, sealed, and delivered }  
in the presence of - }

We, the guardians of the poor of the [\* union, within which the said parish is included] do hereby testify our consent to the binding of the said to the said and have hereunto caused our official seal to be affixed, at a meeting of the Board this day of

(Signed)



Presiding Chairman.

Clerk to the said Guardians.

### SCHEDULE (I.)

#### *Form of Apprentice's Indenture.*

THIS Indenture, made the day of in the year of the reign of her Majesty Queen Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and between aged years, a native of in the county of of the one part, and of in the county of of the other part, witnesseth, That the said hath of his

free will put and bound himself apprentice unto the said with him, his executors, administrators, and assigns, after the manner of an apprentice to dwell, remain, and serve from the day of the date hereof for and during and until the full end and term of years from thence next ensuing fully to be complete and ended; during all which term the said apprentice his said master shall well and faithfully serve; his secrets keep; his lawful commands everywhere do and execute; hurt or damage to his said master he shall not do, consent or see to be done by others, but to the utmost of his power shall hinder the same, and forthwith his said master thereof warn; taverns or alehouses he shall not frequent (unless about his said master's business); at dice, cards, tables, bowls, or any other unlawful games he shall not play; the goods of his said master he shall not embezzle or waste, or lend or give to any person or persons without his said master's licence; nor from the service of his said master, without his consent, at any time absent himself; but as a true and faithful apprentice shall demean and behave himself towards his said master, his executors, administrators, or assigns, during the said term; and true and just accounts of his said master's goods, chattels, and money committed to his charge, or which shall come to his hands, faithfully he shall give at all times, when thereunto required by his said master, his executors, administrators, or assigns; and shall also render an account of, and well and truly pay or cause to be paid unto his said master, his executors, administrators, or assigns, all such wages, prize money, and other sum or sums of money as shall become due and payable unto him from her Majesty, her heirs, successors, or any other person, in case he shall be impressed, enter, or go into her Majesty's service during the said term. In consideration whereof the said doth hereby covenant and agree to and with the said the apprentice, that he the said his executors, administrators, or assigns, during the said term of years, shall and will teach, learn, and inform the said apprentice, or cause him to be taught, learned, and

\* If the parish be not in union, omit the words within brackets.

informed, in the art, trade, or business of a mariner or seaman, with the circumstances thereunto belonging; and shall and will find and provide for the said apprentice sufficient meat, drink, washing, lodging, medicine, and medical and surgical aid and advice to pay unto the said apprentice the sum of pounds of lawful money of Great Britain, in manner following; (that is to say,) the said finding and providing to and for himself all manner of sea bedding, wearing apparel, and other necessities (except meat, drink, lodging, washing, medicine, and medical and surgical aid and advice): And it is hereby agreed between the said parties, that the said shall and may from time to time during the said term deduct and retain in his hands, out of the several yearly payments above mentioned, all such sum or sums of money as he shall at any time during the said term disburse or lay out in the buying of any apparel or sea bedding for the said apprentice, as need shall require: And for the true performance of all and singular the covenants and agreements aforesaid, each of them, the said and doth hereby bind and oblige himself, his heirs, executors, and administrators, unto the other of them, his executors and administrators, firmly by these presents, in the penal sum of pounds of lawful money of Great Britain.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year above written:

Signed, sealed, and delivered }  
in the presence of us - }

THE END.

LONDON :  
SPOTTISWOODE and SHAW,  
New-street-Square.





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